

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 855

September Term, 2021

KIMBERLY KOWALCHIK

v.

KOEBEL PRICE

Graeff,
Nazarian,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: May 3, 2022

*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.

Approximately three years after Kimberly Kowalchik (“Wife”) and Koebel Price (“Husband”) divorced in 2018, Husband filed a contempt petition and motion for enforcement of judgment, alleging multiple violations of the divorce judgment. The Circuit Court for Anne Arundel County granted Husband’s motion for enforcement of judgment without a hearing.¹ The court ordered Wife to sell the former family home, repay Husband benefits she had received on behalf of their children, remove herself as the designated payee for the children’s Social Security benefits, and pay damages to Husband in an amount to be determined at trial. Wife filed a motion to reconsider and rescind the court order, which the circuit court denied without a hearing. Wife noted a timely appeal.

As rephrased and reordered by us, Wife presents the following questions for our review:

- 1) Did the circuit court err in granting Husband’s motion for enforcement of judgment without a hearing?
- 2) Did the circuit court abuse its discretion in failing to vacate the order granting Husband’s motion to enforce judgment?
- 3) Did the circuit court err in granting Husband’s motion for enforcement of judgment prior to service of process upon Wife pursuant to Md. Rule 2-121?
- 4) Did the circuit court err in granting Husband’s motion for enforcement of judgment prior to the date on which an answer to the motion was due pursuant to Md. Rule 2-311(b)?
- 5) Did the circuit court err in failing to require the issuance of a summons to accompany Husband’s motion for enforcement of judgment pursuant to Md. Rule 2-114(b) to be served upon Wife in accordance with Rule 2-121(a)?

¹ The court did not hold a hearing or rule on the contempt petition.

- 6) Did the circuit court err in finding that Husband’s motion for enforcement of judgment was unopposed, and in granting that motion, rather than entering a default judgment against Wife?
- 7) Did the circuit court err in not requiring the addition of the parties’ children and the Social Security Administration as necessary parties prior to entering the order granting Husband’s motion to enforce judgment?

For the reasons set forth below, we shall answer the first and second questions in the affirmative and shall vacate the circuit court’s order enforcing the judgment and remand for further proceedings. We need not address Wife’s third, fourth, fifth, and sixth questions, as they are unlikely to arise on remand. We shall not address Wife’s seventh question as that issue was not decided by the trial court and, therefore, is not preserved for our review pursuant to Md. Rule 8-131(a).

FACTUAL AND PROCEDURAL BACKGROUND

On June 25, 2018, the circuit court entered a Judgment of Absolute Divorce, incorporating the terms of the parties’ consent agreement. Pursuant to the judgment, Husband transferred to Wife his right, title and interest in the home and signed a quitclaim deed transferring to Wife title to the parties’ home located in Annapolis, Maryland. The judgment provided that by October 28, 2018, Wife was required to refinance and remove Husband from any and all liability for the first mortgage and the Home Equity Line of Credit (“HELOC”) on the home. The quitclaim deed was to be recorded upon the completion of the refinance. The judgment further provided that, if Wife was unable to refinance by April 30, 2020, both parties had a right to petition the court for sale and/or appointment of a trustee.

On December 20, 2018, Husband filed a petition for contempt and motion to enforce the divorce judgment, alleging that Wife had violated the divorce judgment by failing to refinance or list the home for sale. Prior to the show cause hearing, Wife listed the home for sale. At the hearing on June 25, 2019, the court dismissed Husband’s contempt petition, finding that the issues set forth in the contempt petition had been resolved.

On or about March 11, 2020, Wife refinanced the mortgage and recorded the quitclaim deed for the home. On June 8, 2021, Husband filed a second petition for contempt, alleging that Wife had violated the divorce judgment by refinancing the home after the date set forth in the judgment. He claimed that Wife had failed to make timely payments on the mortgage and the HELOC which, in turn, had “adversely affect[ed]” his credit “to the point he could not qualify [for] and obtain a traditional lease to rent an apartment or home in the majority of the area because of his credit score,” and he “was unable to secure future loans or loans at a reasonable interest rate, and unable to purchase a home.” Husband requested that the court order Wife to “list and sell” the home.

In his motion, Husband further alleged that on or about January 2019, in violation of the divorce judgment, Wife had applied for and received appointment as the Representative Payee for the Social Security disability benefits due to the parties’ minor children based on Husband’s medical disability. Husband alleged that Wife had received a lump sum disability benefit payment of approximately \$35,000-\$45,000 and a monthly payment between \$1,200 and \$1,500. Husband requested that the court order Wife to “complete the necessary forms required to waive (or terminate) her right to be Representative Payee for the [children]’s benefits ... and pay to [Husband] all the money

she has received (and will receive until the waiver is effectuated)[.]” Husband further requested an award of damages and attorneys’ fees incurred as a result of the enforcement of the divorce judgment.

On June 11, 2021, the court issued a Show Cause Order. The Show Cause Order provided that the petition for contempt and Show Cause Order shall be served on Wife on or before July 21, 2021, that an answer shall be filed by August 6, 2021, and that the contempt hearing shall be held on August 17, 2021.

On June 18, 2021, Husband filed a Motion to Enforce Judgment of Absolute Divorce and Other Related Relief, setting forth the same allegations that were contained in the contempt petition. The motion was accompanied by a Domestic Case Information Report. In the motion, Father requested a hearing pursuant to Md. Rule 2-311(f). Husband served Wife with the motion by mailing the motion first class mail, postage prepaid. Husband’s counsel also sent a copy of the motion to Wife by e-mail.

On June 23, 2021, Wife’s attorney entered an appearance. On July 28, 2021, a private process server filed an affidavit attesting that, on July 8, 2021, Wife was served with the Show Cause Order and petition for contempt.

On July 15, 2021, the court, finding that Husband’s motion to enforce judgment was unopposed, granted the motion without a hearing. At that time, Wife had not submitted a response to Husband’s contempt petition or motion to enforce the judgment. The court issued a written order, awarding Husband the entirety of the relief he requested in his motion, as follows:

ORDERED that Plaintiff: (1) immediately list and sell the Home pursuant to the parties' Judgment of Divorce; (2) complete the necessary forms required to waive, renounce, and/or terminate her right to be Representative Payee for the Minor Children's benefits associated with [Husband]'s Social Security Disability Benefits and pay to [Husband] all of the money that she has received (and will receive until the waiver/renunciation/termination is effectuated) as a result of applying for and being named the Representative Payee of the Minor Children for the Social Security Disability Benefits of [Husband]; and (3) be required to pay damages to [Husband], as determined at trial, resulting from [Wife]'s actions that caused the following: a) [Husband]'s credit score to suffer; b) relating to [Husband]'s inability to obtain loans to buy and rent houses for real estate investment purposes in order to obtain passive income; c) caused [Husband]'s passive income potential to be reduced by more than 50%; d) caused [Husband] to not be able to qualify for a loan to purchase a home at a reasonable interest rate; and e) caused [Husband] to pay higher rent expenses because of his credit score and his inability to apply for an[d] be accepted for other homes or apartments in the area[] at a cheaper rental rate.

On July 21, 2021, Wife filed a motion to reconsider and rescind the court order of July 16, 2021, arguing that the order was “imprudently entered[,]” as service of process was improper and the time for filing a response to the Show Cause Order had not yet expired. Wife also filed a motion to dismiss Husband's contempt petition. On August 12, 2021, the court denied, without a hearing, Wife's motion to reconsider and rescind. Wife noted an appeal on August 13, 2021.

DISCUSSION

Wife contends that (1) service of the petition for contempt and Show Cause Order was improper; (2) the court erred in treating Husband's motion to enforce judgment as a motion rather than a complaint that would have required the issuance of a summons; (3) the court erred in ruling before Wife was required to file an answer to the petition for

contempt; (4) the court erred in failing to hold a hearing pursuant to Md. Rule 2-311(f); and (5) the court erred in denying the motion for reconsideration.

I.

During oral argument, there was some discussion as to whether the July 16, 2021 order is appealable, assuming we were to conclude that Husband’s motion to enforce judgment should have been treated as a complaint and served as original process.

The July 16, 2021 order was entered in the divorce case. That order was entered after, not before, the final judgment was entered in 2018. The order was not docketed as a “new” case.

Although the July 16, 2021 order by its terms contemplated a subsequent damages proceeding, it required Wife to sell her home. Thus, even if there were no final judgment, the order would be appealable under the exception to the final judgment rule permitting appeal of orders for the sale of real property. *See* Md. Code (1974, 2020 Repl. Vol.) § 12-303(3)(v) of the Courts & Judicial Proceedings Article (“CJP”).

“[T]here is a long-standing bedrock rule of appellate jurisdiction, practice, and procedure that, unless otherwise provided by law, the right to seek appellate review ... ordinarily must await the entry of a final judgment that disposes of all claims against all parties.” *Remson v. Krausen*, 206 Md. App. 53, 71 (2012) (quoting *Silbersack v. AC & S, Inc.*, 402 Md. 673, 678 (2008)); *see* CJP § 12-301. To constitute an appealable final judgment, a ruling of the court must (1) be intended by the court to be an unqualified, final disposition of the matter in controversy, (2) adjudicate all claims against all parties, and (3) the clerk must make a proper record. *Remson*, 206 Md. App. at 71 (citing *Rohrbeck v.*

Rohrbeck, 318 Md. 28, 41 (1989)); accord *Metro Maint. Sys. S., Inc. v. Milburn*, 442 Md. 289, 299 (2015). The order must be “unqualified[.]” leaving no suggestion “that a further order be signed or that anything more be done.” *Walbert v. Walbert*, 310 Md. 657, 661 (1987); see also *Miller & Smith at Quercus, LLC v. Casey PMN, LLC.*, 412 Md. 230, 243 (2010).

In contrast, an interlocutory order is “an order ‘that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action’” and therefore “‘is not a final judgment[.]’” *Baltimore Home All., LLC v. Geesing*, 218 Md. App. 375, 381 (2014) (quoting Md. Rule 2-602(a)). Though a party may not ordinarily appeal from an interlocutory order, CJP § 12-303 sets forth certain exceptions to the final judgment rule. Specifically, CJP § 12-303(3)(v) provides that “[a] party may appeal from ... [a]n order ... [f]or the sale, conveyance, or delivery of real ... property[.]” That exception applies to transfers “which, on their face, [are] self-executing without the need for further involvement by the court[.]” *Winkler Constr. Co. v. Jerome*, 355 Md. 231, 245 (1999) (holding that an interlocutory order establishing a lien was appealable under CJP § 12-303(3)(v) because the order also required the sale of the property if the lien was not satisfied by a certain date).

We shall review the merits of the appeal.

II.

We agree that the court erred in failing to hold a hearing, and thus, we vacate the court’s July 16, 2021 order and remand for further proceedings.

Husband argues that Wife failed to preserve her argument that she was entitled to a hearing because she failed to file a response to the motion. Even if preserved, he contends that no hearing was required because Wife failed to request one. Husband further asserts that, pursuant to Rule 2-311(f), the court had discretion to determine if a hearing should be held, and the court did not abuse its discretion in declining to hold a hearing on the motion.

Rule 2-311(f) provides:

A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading “Request for Hearing.” The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

“[W]here there has been a timely request for a hearing on a motion that is dispositive of a claim or defense, procedural due process requires that the court provide an oral hearing and ‘adequate notice of the time, place, and nature of that hearing’” before entering an order that is, in fact, dispositive of the claim or defense. *Briscoe v. Mayor and City Council of Baltimore*, 100 Md. App. 124, 127 (1994) (quoting *Phillips v. Venker*, 316 Md. 212, 222 (1989)). For purposes of Rule 2-311(f), we have defined “dispositive decision” as “one that conclusively settles a matter.” *Lowman v. Consol. Rail Corp.*, 68 Md. App. 64, 76 (1986); accord *Pelletier v. Burson*, 213 Md. App. 284, 292 (2013). In other words, a hearing must be held if a ruling is “dispositive of a ‘claim’ or ‘defense’” that is “intrinsic to the underlying cause of action[.]” *Fowler v. Printers II, Inc.*, 89 Md. App. 448, 485 (1991); see also *Bond v. Slavin*, 157 Md. App. 340, 355 (2004) (holding that the circuit

court’s denial of appellant’s motion was dispositive of his claim, where appellant had no other recourse to obtain the relief sought).

In this case, Husband properly requested a hearing on the motion by including a request under the heading “Request for Hearing.” The July 16, 2021 order granting Husband’s motion to enforce was dispositive of Husband’s claim that Wife had violated multiple provisions of the divorce judgment. The order was also dispositive of Wife’s defenses that the alleged violation of the judgment had been “cured” by her refinance of the home; that her role of representative payee for the children was not a violation of the terms of the judgment; and that the damages and further relief requested by Husband exceeded the scope of the judgment. Moreover, the Court of Appeals has recognized that where a property interest is at stake, a party is ordinarily entitled to a hearing before being deprived of that property interest. *Phillips*, 316 Md. at 217 (holding that appellants were entitled to notice of summary judgment hearing where they had a property interest in their personal injury claim) (citing *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).

Wife’s failure to respond to Husband’s motion and submit a request for a hearing did not deprive her of her right to a hearing. We have recognized that a hearing is required if a party requests one, even if the opposing party does not. *See Adams v. Offender Aid & Restoration of Baltimore, Inc.*, 114 Md. App. 512, 517 (1997) (holding that a hearing is required under Rule 2-311(f) where the moving party requests a hearing, even if the non-moving party does not request it); *Karl v. Blue Cross*, 100 Md. App. 743, 747-48 (1994) (“[A]ppellant was entitled to an oral hearing on the motion, despite the fact that the hearing was requested by appellee.”).

In *Phillips v. Venker*, the Court of Appeals recognized the “common sense interpretation of [Rule 2-311(f)]”:

“Under section (f) of [Rule 2-311], if the motion is one for which a hearing must be granted and the moving party demands a hearing, the court may not thereafter rule on the motion without a hearing, even if no response is filed. The motions rule does not recognize the concept of a default in response to a motion. Rather, the court must consider the merits of the motion before it. **The responding party may elect to file no response and rely on the hearing demanded by the moving party.** The parties may stipulate, however, to a withdrawal of the request for hearing.”

316 Md. at 217-18 (quoting P. Niemeyer and L. Richards, *Maryland Rules Commentary*, p.33 (1984, 1988 Supp.)) (emphasis added).

Here, Husband had properly requested a hearing and the court’s order granting the motion was “dispositive” of the merits of Husband’s claims and Wife’s defenses. Wife was therefore entitled to a hearing under Rule 2-311(f) and the court erred in granting Husband’s motion without a hearing. We also conclude that the court abused its discretion when it denied Wife’s motion for reconsideration without a hearing. Accordingly, we shall vacate the court’s order and remand for further proceedings. *See Seidel v. Panella*, 81 Md. App. 124, 129-30 (1989) (holding that the court’s failure to grant a hearing where one was required under Rule 2-311(f), required that the order granting relief be vacated and the case remanded).

Even if a hearing was not required, we conclude that the court abused its discretion in granting Husband’s motion without a hearing. Abuse of discretion occurs when a ruling is “clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result[.]” *North v. North*, 102 Md. App. 1, 13 (1994) (citation omitted). Though Rule 2-

311(f) provides courts generally with discretion in deciding whether a motion requires a hearing, in this case, the court abused its discretion in failing to hold a hearing prior to rendering its decision. The court granted Husband’s motion prior to the date of the show cause hearing and prior to the expiration of the time for Wife to respond to the contempt petition. On these facts, where two requests for relief were pending simultaneously, a reasonable person would expect the response time to extend up to and including the date of the show cause hearing. We note that the relief granted in the July 16, 2021 order went beyond the terms of the judgment. As a matter of fairness, the court should have held a hearing and given Wife an opportunity to defend against Husband’s claims before deciding the motion and granting Husband the extensive substantive relief provided in the order.

**JULY 16, 2021 ORDER VACATED; CASE
REMANDED FOR FURTHER
PROCEEDINGS NOT INCONSISTENT
WITH THIS OPINION. EACH PARTY TO
PAY HIS/HER OWN COSTS.**