Circuit Court for Montgomery County
Case No. 149364-FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1082

September Term, 2018

XIA HUANG

v.

QI ZHENG

Wright,
Beachley,
Wilner, Alan M. (Senior Judge, Specially Assigned)

JJ.

Opinion by Wilner, J.

Filed: June 10, 2019

*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.

This is a divorce case filed by appellee in the Circuit Court for Montgomery County. The parties were born in China, married there in 1994, and emigrated to the United States in 1995. Two children were born here, one in 2004, the other in 2006. Appellee and the children are U.S. citizens. The couple separated in August 2012, and shortly thereafter appellee and the children relocated to China, without any apparent objection by appellant, who remained in Maryland.[1] Appellant remained in the marital home until the mortgage on it was foreclosed, when she moved to 309 Twisted Stalk Drive in Gaithersburg.

In 2013, following his move to China, appellee filed a divorce action in Maryland which, at appellant's request, was dismissed in January 2014 by stipulation. This action was filed in November 2017. It was based on a 12-month separation. Aside from the divorce, appellee asked for child support, a monetary award based on the value of marital property, and attorneys' fees.

Regrettably, appellee's attorney sewed confusion by listing the ZIP Code for Germantown in the complaint and by substituting "Oak" for "Stalk" in the street address

[1] Appellee claimed that the move was out of concern that appellant was abusing one of the children. He had filed a claim of abuse with the Department of Social Services, which found no abuse. Appellee's unrebutted testimony was that appellant did not want children or the responsibility for taking care of them and that he was the nurturing parent. He testified that appellant had no objection to the move and actually assisted in procuring visas for the children. Except for one telephone conversation in 2013, she has had no contact with the children since the move, and, although in 2016 she returned to China when her mother died, she did not contact them at that time.

in other filings and notices. Eventually, those mistakes were corrected, but appellant has made them an issue in this appeal. The principal issue before us stems from appellant's failure to participate in the litigation. Though personally served at her place of employment – a Giant Food store in Gaithersburg – appellant declined to file an answer to the complaint, and, in due course, appellee moved for an order of default pursuant to Md. Rule 2-613. No response was filed to that either, and, on January 19, 2018, an order of default was entered by the court. Notice of the order was sent both by appellee and the court clerk to appellant at 309 Twisted Oak Drive in Gaithersburg. Appellee's notice was served on appellant at the Giant Food Store. The order advised appellant that she had 30 days in which to move to strike the order of default.

No response was filed and eventually a hearing was scheduled on the merits of appellee's complaint for March 30, 2018. On February 6, 2018, appellant was notified by letter from appellee's attorney of the scheduled hearing, along with notice that appellee would be seeking child support, a monetary award, a distribution of appellant's pension, and attorneys' fees. Enclosed with that notice was a subpoena issued by the court clerk directing appellant to appear at 9:30 a.m. and bring with her documents described in Schedule A to the subpoena. The letter and subpoena were served on appellant at her place of employment. Appellant ignored the subpoena and notice and failed to appear.

At the hearing, appellee presented uncontroverted evidence regarding the history of the marriage, the birth and welfare of the couple's two minor children, appellant's and appellee's income, appellee's expenses, the marital property, including proceeds from the foreclosure sale of the former marital home, appellee's retirement benefits, and appellant's pension plan with Giant Food. Despite the earlier advice that appellee would be seeking a share in appellant's pension, he withdrew that that request.

From that evidence, the court found:

- That appellee's gross monthly income, in dollars, was $1,593;
- That appellant's gross monthly income was $1,719;
- That the surplus from the foreclosure sale was $247,648;
- That an Ameritrade IRA account in appellee's name had a balance of $50,000, and appellee had $3,000 in his bank account;
- That the total property interests of the parties were largely equal – $176,824 for appellee and $173,824 for appellant; and
- That prior to the separation, appellee was the sole wage earner and the primary caregiver for the children.

Appellee had testified that, in order to care for the children and maintain his employment, he had hired a live-in nanny, who not only watched the children, but took them to and from school on her bike and did all of the cooking, housekeeping, and

laundry, and that he paid her the equivalent of $1,274 a month. The court felt that was unnecessarily high, given appellee's income, and gave him credit for only $681 a month.

Upon those findings, the court awarded appellee $820 per month in child support, found an arrearage from November 14, 2017, when the complaint was filed, to the date of the hearing of $3,280, and entered a judgment for that amount in favor of appellee. With respect to marital property, the court valued all the marital property at $350,649, applied the factors set forth in Md. Code, § 8-205 of the Family Law Article, noted that appellee was not seeking any share of appellant's pension, noted also that appellee had depleted some of his assets in order to pay his attorney and expenses for child care, to which appellant had made no contribution, and granted appellee a monetary award of $121,227. On April 11, 2018, judgment was entered on a separate document in accordance with those determinations. Notice was sent to appellant the same day.

On April 23, 2018, appellant filed a motion to reconsider, which is not included in the Record Extract. On May 17, 2018, appellant filed an amended motion, in which she alleged that she did not participate in the case because "she has significant language difficulties and did not understand the nature of the proceedings against her," that, while the parties lived together, appellee earned over $120,000 a year, that appellant earns only $13.50 per hour in part-time employment, that the parties own a condominium in China worth $250,000, that appellee owns a business in China worth $15 million, that appellant is entitled to alimony, and that appellee's sister was actually caring for the children. She

asked that the judgment be vacated and that her claims be considered. Appellee denied all of those allegations and opposed the initial motion and the amended motion, and the court denied them. This appeal ensued.

In presenting her claim in this Court, appellant relies heavily on *Wells v. Wells*, 168 Md. App. 382 (2006). There are, to be sure, a number of similarities between that case and this one, but there also are significant differences. In *Wells*, the husband filed a complaint for divorce based on the wife's adultery, which was adequately proved. The wife failed to answer the complaint, and an order of default was entered. The wife failed to move to strike the order, and a hearing was scheduled, and held, on the merits. Notice of the hearing was sent to both parties who, unlike in this case, were still living together in the marital home. The hearing was held before a master (magistrate). The wife did not appear and offered no evidence. Based on the evidence presented by the husband and his witnesses, the magistrate recommended, and the court signed, a judgment that (1) gave the husband custody of the minor child and use and possession of the family home, and (2) ordered that the wife pay child support. When apprised of the judgment, the wife moved for reconsideration within a week after its entry, which the court denied.

The wife appealed, arguing that the court abused its discretion in denying the motion for reconsideration. In support of her argument, she offered evidence that the husband had defrauded her into not responding by intercepting the various notices, so she never saw them, failing to serve the order of default, and lying to her about what was

happening. Although the husband denied those allegations, by summarily denying the motion to reconsider, the court deprived her of a hearing on them.

This Court recognized that a decision whether to grant or deny a motion to reconsider an unenrolled judgment under Rule 2-534 or 2-535 is discretionary, even in default situations, but was concerned not only about the allegations of fraud and deception but also about the dramatic impact on the wife of failing at least to hold a hearing on the motion – loss of custody of the child and, through the use and possession order, forced removal from her home. Under the circumstances presented, this Court held that the trial court's summary denial amounted to an abuse of discretion and vacated the judgment on all issues other than the divorce. In reaching that result, the Court noted that, under Rule 2-613, an order of default forecloses only further proceedings on issues of liability, not collateral consequences of such an order, and that, in a divorce action, that applies only to whether a divorce (or annulment) should be granted, not the child access or monetary consequences flowing from that determination.

As a preliminary matter, because appellant did not include the initial motion for reconsideration in the record extract, and we are not about to go hunting for it in the record, we do not know what it says. All we have is the amended motion, which was filed more than 30 days after entry of the judgment and precludes favorable consideration except upon a finding of extrinsic fraud, jurisdictional or clerical mistake, or irregularity and that the movant acted with due diligence, those requirements being narrowly

construed. *Early v. Early*, 338 Md. 639, 652 (1995). The amended motion alleges none of those things.

We do not rest our decision on that, however, but shall assume that the initial motion was similar to the amended motion and thus addressed an unenrolled judgment, over which the court had broad discretion, which appellant's attorney acknowledged at oral argument. We do not depart from the holdings in *Wells*. Here, however, there was no allegation, much less proffered evidence, that appellee impeded appellant's ability to respond – to the complaint or the order of default, or to participation at the merits hearing. Notwithstanding the mistakes in the appellant's street address, the evidence showed that she was given notice at her place of employment.

There was evidence that appellant had been properly served with the complaint and all subsequent motions and notices and no evidence or even allegations of dissembling or fraudulent conduct by appellee. The record shows unequivocally that appellant was informed throughout of the status of the case and what relief appellee would be seeking. Moreover, appellant was not facing the loss of access to her child, loss of her home, or anything so dramatic. All she wants to retry are money issues – child support, monetary award, and attorneys' fees.

Appellant's only excuse for not participating in the case was her alleged difficulty in understanding English, which is belied by (1) e-mails in English that she sent to

appellee in August, September, and December of 2012 and July, October, and November of 2013, and (2) her continued employment at the Giant Food deli counter for seven years interacting with presumably English-speaking customers. We also take judicial notice of Md. Rule 1-333, which provides for court-appointed interpreters, free of charge, for parties who do not understand English well enough to participate fully in court proceedings.

Wells is distinguishable on its facts. We find no abuse of discretion in the denial of appellant's motion for reconsideration and shall affirm the judgment of the Circuit Court.

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.