

Circuit Court for Montgomery County  
Case No. 112675 FL

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1178

September Term, 2019

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NATASHA BURAK

v.

GARY BURAK, ET AL.

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Nazarian,  
Gould,  
Wright, Alexander, Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: December 11, 2020

\* 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 case was last before this Court in 2016. In a reported opinion, we affirmed orders of the Circuit Court for Montgomery County awarding third-party custody of the minor child born to Natasha Burak (“Wife”) and Mark Burak’s (“Husband”)<sup>1</sup> parents, Martha and Gary Burak (the “Grandparents”), and awarding child support to them. *Burak v. Burak (Burak I)*, 231 Md. App. 242, 267–72, 280–84 (2016). More importantly for present purposes, we also held that the circuit court had erred in permitting the Grandparents to intervene in the property distribution portion of the divorce trial, and we reversed the provisions of the divorce judgment awarding the Grandparents a share of the proceeds from the sale of the marital home. *Id.* at 273–78. Before our mandate issued, however, Wife and Husband already had sold the marital home, and the property distribution judgment in favor of the Grandparents was satisfied from the proceeds of that sale.

The Court of Appeals granted Wife’s petition for a writ of *certiorari* on the third-party custody and child support issues—not on property distribution—and reversed our holdings on custody and child support. *Burak v. Burak (Burak II)*, 455 Md. 564 (2017). On remand after that decision, Wife filed an unopposed request for judgment in her favor and against the Grandparents for her share of the house proceeds, plus interest accruing from the date of the divorce judgment. The circuit court denied the request for judgment, ruling that Wife must file a separate action to recover her share of the proceeds that already had

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<sup>1</sup> Husband was not a party to the prior appeal and is not a party to this appeal.

been distributed to the Grandparents. Wife appeals from that judgment, and we reverse and remand with directions that the court enter judgment in Wife’s favor.

## I. BACKGROUND

### A. The Divorce Proceedings

The custody and property distribution parts of the divorce proceeding were bifurcated. With regard to property distribution, Husband and Wife entered into a voluntary separation and property settlement agreement that provided, among other things, they would list the marital home for sale, split the carrying costs until it was sold, and split any costs to make it saleable as recommended by their realtor. At the property distribution hearing, though, the court permitted the Grandparents to intervene and assert a claim to a portion of the proceeds from the sale of the marital home. The Grandparents contended that they were entitled to the first \$131,000 of the proceeds because they had loaned Husband and Wife that amount to purchase the property. *Burak I*, at 258. Wife took the position that the funds Grandparents had provided were a gift. *Id.* at 274–75. The court found that the Grandparents had made an interest-free loan of \$131,000 to Husband and Wife, conditioned on a promise to repay it when they sold the marital home, and were entitled to reimbursement in that amount from the proceeds of the sale. *Id.* at 258–59.

The judgment of absolute divorce entered on January 23, 2015 incorporated (but did not merge) the voluntary separation and property settlement agreement. In relevant part, the divorce judgment ordered the sale of the marital home and supplemented the agreement by ordering that “the sum of . . . \$131,000[] be, and hereby is . . . awarded to [the

Grandparents] from the total proceeds of the sale of the [marital home] before any other distributions are to be made.” The divorce judgment further directed the clerk to enter a money judgment against Wife and Husband and in favor of the Grandparents in that amount. Any remaining proceeds, after reimbursement for costs to make the property saleable, were to be “divided equally” between Husband and Wife. On January 27, 2015, the court entered judgment in favor of the Grandparents for \$131,000.

A little over nine months later, before this Court issued its decision in *Burak I*, Husband and Wife sold the marital home for \$404,000. From the proceeds of the sale, \$139,398.26 was distributed to the Grandparents to satisfy the judgment.<sup>2</sup>

**B. *Burak I And Burak II***

Less than three months later,<sup>3</sup> this Court held that the circuit court had erred by permitting the Grandparents to intervene in the property distribution portion of the divorce hearing. We reasoned that the divorce case was not an appropriate forum for an unsecured creditor of the divorcing parties to make a claim against the proceeds of sold marital property. *Id.* at 278. (And we expressed no view as to the merits of the Grandparents’ claim for reimbursement. *Id.*) Our mandate, issued on January 6, 2017, stated in relevant part that

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<sup>2</sup> That amount included post-judgment interest. Because only two pages of the HUD-1 Settlement Statement are included in the record, it is not possible to determine the net proceeds distributed to Wife and Husband.

<sup>3</sup> We initially filed an unreported opinion on November 10, 2016, then withdrew it, along with our mandate, when we filed our reported opinion on December 7, 2016.

“Judgment of the Circuit Court for Montgomery County reversed as to the divorce property distribution award.” We affirmed the circuit court’s rulings on custody and child support.

Wife petitioned for *certiorari* review in the Court of Appeals, which was granted. *Burak v. Burak*, 452 Md. 2 (2017). The Grandparents did not seek *certiorari* review of our reversal of the property distribution award, though, so our judgment on that point became final, pending issuance of the mandate. On August 29, 2017, the Court of Appeals reversed this Court’s decision solely as to custody and child support. *Burak II*, 455 Md. at 667, 669. And on October 10, 2017, we vacated our earlier mandate<sup>4</sup> and ordered that “the judgment of the Circuit Court for Montgomery County be, and is hereby, reversed.”

### **C. The Remand**

Three months later, the circuit court issued an order that stated that this Court had “reversed as to the trial court’s property distribution award” but had otherwise affirmed the trial court’s orders; that the Court of Appeals then reversed the orders on custody and child support; and that “[p]ursuant to the Maryland Court of Appeals’ decision and directions,” the circuit court vacated its “Oral Decision, Interim Order, Second Interim Order, and Final Order,” all of which pertained to custody and child support. The circuit court did not vacate the provisions of the divorce judgment awarding the Grandparents a share of the proceeds from the sale of the marital home and directing that judgment be entered in their favor. A

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<sup>4</sup> This Court’s order mistakenly referred to the original mandate, issued on November 28, 2016, that followed our unreported opinion, rather than the mandate issued with our reported opinion on January 7, 2017.

little over a year later, Wife, who was representing herself, filed a Request to Enter Judgment.<sup>5</sup> She alleged that she was entitled to be reimbursed for fifty percent of the proceeds from the sale of the marital home that were erroneously distributed to the Grandparents. She asked the court to enter judgment in her favor in the amount of \$98,296, which amount included fifty percent of the \$131,000, plus interest accruing on that amount at 10% per annum since January 27, 2015. She attached to her motion an exhibit reflecting her calculation of interest and two pages of the HUD-1 settlement statement from the sale of the marital home reflecting the distribution to the Grandparents from the proceeds. The Grandparents did not oppose Wife’s request.

By order entered June 25, 2019, the circuit court denied Wife’s request for entry of judgment, ruling that she “must file a separate action against [the Grandparents], as the Court of Special Appeals has ruled that this court erred in allowing [the Grandparents] to intervene in this matter with regard to the parties’ dispute over the division of marital property.” Wife noted this timely appeal.

## II. DISCUSSION

Wife raises two related contentions on appeal that we have rephrased.<sup>6</sup> *First*, she contends that the circuit court erred by not complying with this Court’s mandate, and

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<sup>5</sup> Wife also requested the circuit court to enter judgment in her favor for appeal costs that she had been ordered to pay initially but that Grandparents ultimately were ordered to pay. That request for judgment was granted.

<sup>6</sup> Wife phrased the Questions Presented in her brief as follows:

1. Whether the trial judge and/or clerk of the circuit court, having noted that the circuit court’s opinion and order

particularly the portion reversing the property distribution award. *Second*, and to the extent that our mandate was ambiguous, Wife asks this Court to revise or correct the mandate to authorize and direct the circuit court to enter judgment consistent with our holding in *Burak I*. We hold that the circuit court erred as a matter of law by not implementing this Court’s mandate, and we reverse the denial of Wife’s request for judgment.

Maryland Rule 8-606(a) provides that “[a]ny disposition of an appeal . . . shall be evidenced by the mandate of the Court . . . and shall constitute the judgment of the Court.” Subsection (e) of Rule 8-606 directs that “[u]pon receipt of the mandate, the clerk of the lower court shall enter it promptly on the docket and the lower court shall proceed in accordance with its terms.” To the extent that a mandate is ambiguous, “then the opinion may be referred to and considered an integral part of that mandate.” *Harrison v. Harrison*, 109 Md. App. 652, 665 (1996). In such a case, “the opinion becomes a part of our mandate, in that it must be considered in order for the trial court to determine what we have directed it to do.” *Id.* at 676.

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regarding marital property distribution had been reversed by the Court of Special Appeals, should have issued judgment in accordance with the opinion and mandate of the Court of Special Appeals.

2. Whether the Court of Special Appeals, in determining that the circuit court did not have the proper direction or one or more of the appellate court’s judgments (mandates) were ambiguous, that mistakes or irregularities occurred, or that the judgment otherwise needed correction, should take revisory power and/or issue any applicable corrections in accordance with rule 2-535(b) and/or (d), and/or take any other appropriate action under its inherent authority that it deems just.

Our mandate in *Burak I* stated that the circuit court judgment was “reversed as to the divorce property distribution award.” *Burak I*, 231 Md. App. at 284. That direction flowed from a holding that for the purposes of the property distribution components of the divorce, the Grandparents were no different than any other unsecured creditor and thus had no right to assert claims against marital property:

Although the Grandparents contributed money for the purpose of purchasing the house, they didn’t take or retain any sort of ownership or security interest in it—their interest, whatever it is, lies against the Husband and Wife individually. That’s why they fear the “windfall” that Wife would reap, in their view—if they can’t capture the house sale proceeds directly, they will have to try and collect them from her and their son as individuals. But if the Grandparents were allowed to intervene here, it would be difficult to distinguish them in a principled way from other unsecured creditors of the divorcing parties, such as credit card issuers, and that is a Pandora’s Box we decline to open judicially. The purpose of divorce proceedings is to sever the martial relationship and distribute the rights and responsibilities that grew out of it, . . . *not* to facilitate the collection of marital debts by third parties. . . . We hold, therefore, that the circuit court erred in considering and resolving the Grandparents’ claim against the house proceeds, and we offer no views on whether the Grandparents have such a claim or on the merits of a claim if they have one.

*Id.* at 278 (citations omitted). As such, the house sale proceeds were to be split, as part of the marital property distribution resolved in this litigation, between Husband and Wife. To the extent that either Husband or Wife failed to carry out the property distribution as directed, the aggrieved party would be entitled to enforce it in the trial court and, if appropriate, to entry of judgment against the other. The Grandparents, on the other hand, were third parties to the property distribution. Like any credit card company

or any other creditor, the Grandparents were welcome to assert and collect whatever debts Husband or Wife owed them and to target the house sale proceeds, but it was on *them* to assert and prove those claims, if any, in a separate proceeding and to execute a judgment on any available assets.

The circuit court’s reading of our mandate and opinion achieved exactly the opposite. Rather than removing the Grandparents from the property distribution equation, where they never should have been, the court effectively left its original decision intact, left the marital property (in fungible cash form) in the Grandparents’ hands, and told Wife that it was up to her to sue separately to recover her marital property from them. To be sure, it would have been easier to implement our decision before the house was sold—the sale could have gone forward, Husband and Wife would split the net proceeds, and the Grandparents could proceed as they wished. But nothing diminished Wife’s rights to the marital property once the house was sold or enhanced the Grandparents’ rights to collect it. Once the case returned to the circuit court from the Court of Appeals, the Grandparents possessed marital property that rightfully belonged to Wife. The court was required to enter appropriate orders to effectuate our mandate, including a judgment *in this case*—which Wife has already won—against the Grandparents, who took the proceeds pursuant to an order that we reversed.<sup>7</sup>

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<sup>7</sup> This would be true for Husband’s share as well if he were asserting his rights to it, but he isn’t.

The Grandparents lack standing to enforce any terms of the Settlement Agreement (let alone terms that this Court has reversed). Further, Grandparents didn't oppose Wife's motion nor is Husband contesting Wife's right to receive her half of the proceeds. Nevertheless, the Grandparents contend on appeal that Husband and Wife's Property Settlement Agreement did not specify how the proceeds from the sale of the marital home should be divided and, thus, the circuit court was not authorized to enter judgment for Wife's share until that issue was determined. They assert as well that Wife's request for judgment is "essentially a request for a monetary award," relief she (and Husband) waived in the Settlement Agreement.

Both of these contentions lack merit. *First*, there is nothing left to determine: the circuit court entered judgment in favor of the Grandparents and against Wife and Husband in the amount of \$131,000, and Wife is entitled to have her half of the proceeds that satisfied the judgment returned to her. *Second*, a judgment in favor of Wife to reimburse her for her share of the house proceeds distributed erroneously is not a new monetary award, but simply accomplishes the division of the proceeds of jointly owned marital property that was diverted to the Grandparents. *See* Md. Code (1984, 2019 Repl. Vol.), Fam. Law § 8-202(b) ("When the court determines the ownership of . . . real property, the court may: . . . as to any property owned by both of the parties, order . . . a sale instead of partition and a division of the proceeds.").

The Grandparents also challenge what they characterize as Wife's request that the judgment be entered "*nunc pro tunc*," which we understand as her request for interest

accruing from the date of the divorce judgment. “[P]re-judgment interest as a matter of right is the exception rather than the rule.” *Ver Brycke v. Ver Brycke*, 379 Md. 669, 702 (2004). And because her right to the sale proceeds ripened on a date certain, she is entitled to prejudgment interest as a matter of right:

(1) as a matter of right—prejudgment interest is allowed as a matter of right when “the obligation to pay and the amount due [have] become certain, definite, and liquidated by a specific date prior to judgment so that the effect of the debtor’s withholding payment was to deprive the creditor of the use of a fixed amount as of a known date”; (2) absolute non-allowance—“where the recovery is for bodily harm, emotional distress, or similar intangible elements of damage not easily susceptible of precise measurement, the award itself is presumed to be comprehensive, and pre-judgment interest is not allowed”; and (3) if the case falls in between the as of right and absolute non-allowance, “pre-judgment interest is within the discretion of the trier of fact.”

*Balt. Cty. v. Aecom Servs., Inc.*, 200 Md. App. 380, 424 (2011) (quoting *Buxton v. Buxton*, 363 Md. 634, 656–57 (2001)).

Here, the Grandparents’ “obligation to pay and the amount due” were not fixed and certain as of the date of the divorce judgment (January 27, 2015), but became fixed when our mandate issued (January 6, 2017). On that date, the property distribution award to the Grandparents was reversed, and their obligation to repay the amount distributed to them from the proceeds of the sale of the marital home was certain and fixed. Wife is entitled to prejudgment interest as of that date as a matter of right.

For these reasons, we reverse the judgment of the circuit court denying Wife’s request for judgment and remand with directions that the court enter judgment in favor of

Wife against the Grandparents for \$65,500, plus prejudgment interest accruing from January 6, 2017 until the date of judgment.

**JUDGMENT OF THE  
CIRCUIT COURT FOR  
MONTGOMERY COUNTY  
REVERSED AND CASE  
REMANDED WITH DIRECTIONS  
THAT THE COURT ENTER  
JUDGMENT FOR APPELLANT IN  
THE AMOUNT OF \$65,500 PLUS  
PREJUDGMENT INTEREST  
ACCRUING FROM JANUARY 6,  
2017 UNTIL THE DATE OF  
JUDGMENT. COSTS TO BE PAID  
BY APPELLEES.**