

Circuit Court for Charles County  
Case No.: C-08-FM-20-000930

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1274

September Term, 2021

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EPAFRODITA MOLINA-ROSA

v.

ROLANDO DE JESUS SANTOS-MORETA

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Nazarian,  
Zic,  
Tang,

JJ.

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Opinion by Tang, J.

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Filed: December 16, 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.

Appellant, Epafrodita Molina-Rosa (“Wife”), filed a complaint for absolute divorce against her husband, Rolando de Jesus Santos-Moreta (“Husband”), in the Circuit Court for Charles County. Prior to the merits hearing, Wife filed a motion *in limine*, seeking, in pertinent part, a determination that funds held in the court’s registry constituted marital property subject to division. The court denied the motion *in limine*, declining to determine the ownership interests in those funds. Wife immediately moved to reconsider the court’s ruling, which motion was denied. Wife appealed from the interlocutory rulings. Because appellate jurisdiction is lacking, the appeal shall be dismissed.<sup>1</sup>

### **BACKGROUND**

In 2009, during the parties’ marriage, Husband and his mother (“Mother”), as tenants in common, purchased a home in Hyattsville, located in Prince George’s County, Maryland, where Husband, Wife, their children, and Mother resided. Years later, Husband and Wife purchased a home in Waldorf, located in Charles County, Maryland, where the family relocated. The Hyattsville property was thereafter maintained as a rental property.

In August of 2020, Wife filed a complaint for absolute divorce in the Circuit Court for Charles County, claiming the Hyattsville and Waldorf properties as marital property. Upon learning that Husband and Mother planned to sell the Hyattsville property, Wife filed a notice of *lis pendens* in the Circuit Court for Prince George’s County, seeking to protect

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<sup>1</sup> *See East v. Gilchrist*, 293 Md. 453, 458 (1982) (“[T]his Court will dismiss an appeal *sua sponte* when it notices that appellate jurisdiction is lacking.”) (citations omitted).

her marital interest in the property pending resolution of the divorce proceeding in Charles County.<sup>2</sup>

Husband filed a motion to strike Wife’s notice of *lis pendens*. Eager to proceed with the sale without delay and conceding the property was partially marital property, Husband proposed that, upon settlement, the Circuit Court for Prince George’s County direct that one-half of the sale proceeds be deposited into the court’s registry pending resolution of the divorce proceeding.

In October of 2020, the Circuit Court for Prince George’s County granted Husband’s motion to strike the *lis pendens* and ordered that

the *entire amount of the proceeds* from the sale of the [Hyattsville property] be withheld by the settlement agent and/or title company, and that said settlement agent shall deposit said amount into the Court’s Registry of the Circuit Court for Charles County, on behalf of Case Epafrodita Molina-Rosa v. Rolando Santos-Moreta, Case No. C-08-FM-20-000930.

(Emphasis added). Neither party appealed from that order.<sup>3</sup>

In November 2020, the net proceeds from the sale of the Hyattsville property totaling \$163,576.38 were deposited into the registry of the Circuit Court for Charles County where the divorce proceeding was pending.<sup>4</sup>

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<sup>2</sup> A notice of *lis pendens* “is constructive notice of the pending action as to the subject real property” and must be filed in the “county in which real property that is the subject of the action is located[.]” Md. Rule 12-102(b).

<sup>3</sup> Mother was not a party to the *lis pendens* action.

<sup>4</sup> The Hyattsville property sold for \$352,000. After adjustments and deductions for the mortgage payoff and costs, the total equity remaining was \$163,576.38.

In July 2021, Wife filed a motion *in limine* seeking, in relevant part, that the Circuit Court for Charles County declare that the entire amount held in the court’s registry “constitutes marital property subject to equitable distribution.”<sup>5</sup> Wife claimed the sale of the Hyattsville property extinguished the tenancy as to Husband and Mother and converted the sale proceeds into marital property belonging to Husband and Wife. Additionally, Wife asserted that Mother, who was not a party to the *lis pendens* action, relinquished her right to the funds in the registry when she authorized the transfer of her share of the net proceeds to the court’s registry “on behalf of Case Epafrodita Molina-Rosa v. Rolando Santos-Moreta, Case No. C-08-FM-20-000930” pursuant to the order.

After various postponements, the merits hearing was scheduled for two days beginning on October 14, 2021, at which time the court addressed Wife’s motion *in limine*. After hearing arguments, the court denied the motion, explaining,

in reviewing the facts in this case, I don’t believe there is a difference in placing the funds in the court registry on behalf of a case, which may be a requirement of the Clerk’s office. I don’t know that it has to be connected to some case.

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<sup>5</sup> “Typically, a motion *in limine* is a motion made before or during a jury trial outside of the hearing of the jury, the purpose of which is to prevent the jury from hearing certain questions and statements that are allegedly prejudicial to the movant.” *Prout v. State*, 311 Md. 348, 356 (1988). “Thus, the real purpose of a motion *in limine* is to give the trial judge notice of the movant’s position so as to avoid the introduction of damaging evidence which may irretrievably infect the fairness of the trial.” *Id.*

Wife’s motion *in limine*, insofar as it sought to establish the character of the registry funds as a matter of law, was, in effect, a motion for partial summary judgment. Although Wife’s use of the motion *in limine* in this regard is atypical, the Maryland Rules do “not prevent the trial court from exercising its discretion during trial to entertain any motions *in limine* or other preclusive motions that may have the same effect as summary judgment and lead to a motion for judgment under Md. Rule 2-519.” Md. Rule 2-501(a) (Committee Note).

I don't believe there was any intent by the [c]ourt in Prince George's County to destroy the tenants in common claim as to how much each individual between [Husband and Mother] may have been entitled to from that property. So, I am . . . Mr. Clerk, so if you will do a line docket entry that the motion to . . . the motion in limine is denied as to the funds in the court registry.

There has been a lot of information that was presented during argument that would require an evidentiary hearing. I don't think as a matter of law the [c]ourt can determine that [Mother] waived any claim to that property, and therefore the [c]ourt is going to deny the motion.

After the court adjourned for the day, Wife filed a motion to reconsider the court's denial of her motion *in limine*. The next day, the parties appeared before the court and addressed Wife's motion to reconsider. Wife argued that Mother, using Husband as the conduit, had improperly asserted a third-party claim over the registry funds in the divorce proceeding, when she should have asserted her claim in a separate action. The court denied Wife's motion to reconsider, explaining,

Because the [c]ourt, as I believe I stated yesterday, [Mother] is not a party to this case. And the [c]ourt is very concerned that a ruling in this case establishing her rights or interests may not be appropriate if she is not a party to this case.

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What I am comfortable with is my ruling yesterday that [Mother] has not waived [her] interest in that money, and I am not prepared to determine the amount that is owed to [Husband] or [Husband's] rightful share of that money.

What I am prepared to determine in the divorce case is how much [Wife] is entitled to from a percentage of . . . those funds.

Husband expressed concern that the court would be unable to make a monetary award and distribution of marital assets on the merits without first establishing "how big the pie is going to be[.]" The court indicated, "all I think the [c]ourt would be able to rule

in this case, and without the third party being a party to this case, would be the percentage that each party would be entitled to out of that asset[.]” Wife inquired whether Mother could intervene in the divorce proceeding or whether, instead, a separate action must be filed to determine Mother’s interest in the funds. The court declined to address either question. After further discussions about the implications of Mother’s non-party status in both the *lis pendens* and divorce proceeding and the effect on Mother’s purported ownership interest in the funds, the court concluded,

No matter how we got here, here is where we are. We have the proceeds from the sale sitting in a separate account in the clerk’s office that was put here, for whatever reason, how it got here, it was by court order and that is fine.

Whether it was by court order then it went into the trust account of someone, or whether it went into the court’s, I don’t think it changes the ownership of the property, and I don’t think that issue has been decided.

At the conclusion of the hearing on October 15, 2021, the court rescheduled the merits hearing. In the meantime, Wife timely noticed an appeal from the interlocutory rulings “on or about October 14, 2021, and October 15, 2021, relating to \$163,576.38 held” in the court’s registry. Wife cited to § 12-303(1) and (3)(v) of the Courts and Judicial Proceedings Article (“CJP”) of the Maryland Code as the statutory mechanisms authorizing her interlocutory appeal.

### **ISSUES PRESENTED**

Wife presents two questions on appeal:

1. [Did] the hearing court err[] in holding that it could not make a monetary award in this case until husband’s mother either intervened in this case or took part in a separate lawsuit wherein she could assert her rights to these funds[?]

2. [Did] the hearing court err in holding that husband’s mother maintained the same interest in these funds that she had held in the Hyattsville home even though husband’s mother signed settlement documents authorizing the disbursement of the net proceeds from the sale to the court registry “on behalf of” the instant case without reserving any right to these proceeds[?]

### **DISCUSSION**

A question exists as to whether the interlocutory rulings from which the appeal is sought are appealable. Although Husband did not raise the issue, “we can raise the issue of finality on our own motion.” *Zilichikhis v. Montgomery County*, 223 Md. App. 158, 172 (2015).

Generally, an appeal will only lie from a final judgment. *Jackson v. State*, 358 Md. 259, 266 (2000). “[T]here are only three exceptions to that final judgment requirement: appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine.” *Salvagno v. Frew*, 388 Md. 605, 615 (2005). This case implicates the first category.

CJP § 12-303 enumerates the interlocutory rulings from which an appeal is statutorily permitted. As stated, Wife, conceding that the rulings were not a final judgment, claims that the rulings at issue are appealable pursuant to CJP § 12-303(1) and (3)(v). CJP § 12-303 reads, in pertinent part,

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

- (1) An order entered with regard to the possession of property with which the action is concerned or with reference to the receipt or charging of the income,

interest, or dividends therefrom, or the refusal to modify, dissolve, or discharge such an order;

\* \* \*

(3) An order:

\* \* \*

(v) For the sale, conveyance, or delivery of real or personal property or the payment of money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court[.]

Unless one of these exceptions applies, “[a]n appellate court is without jurisdiction to entertain an appeal[.]” *In re Special Investigation No. 236*, 295 Md. 573, 575 (1983).

### **CJP § 12-303(1)**

#### **Possession of Property; Income, Interest, or Dividends from Property**

We easily conclude that the court’s rulings did not involve “the receipt or charging of the income, interest, or dividends” from the property.

With respect to possession of property, Maryland courts have held that CJP § 12-303(1) does not authorize an appeal from an interlocutory ruling merely because the challenged ruling relates tangentially to an interest in or ownership of property. In *Lewis v. Lewis*, 290 Md. 175 (1981), the Supreme Court of Maryland<sup>6</sup> held that an order with respect to whether military retirement benefits was part of the marital estate was not an order regarding possession. *Id.* at 184. There, the husband obtained from a Texas court a divorce decree and a declaration that the wife had no interest in his military retirement benefits. *Id.* at 178. Thereafter, the wife filed a complaint for divorce in the Circuit Court for Montgomery County. *Id.* The husband moved for partial summary judgment, which

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<sup>6</sup> On December 14, 2022, the name of the Court of Appeals was changed to the Supreme Court of Maryland.



the court granted, specifying that, *inter alia*, the marital property that was the subject of the Texas decree, including the retirement benefits, was “removed from the Maryland Marital Estate for purposes of the Maryland Court’s exercising any of the powers” over it. *Id.* at 179. The wife appealed from the partial summary judgment pursuant to CJP § 12-303(1), but the Supreme Court dismissed the appeal, explaining,

Had the order here ousted [wife] *pendente lite* from the possession of the home she was then occupying in Montgomery County, we would have an example of “(a)n order entered with regard to the possession of property with which the action is concerned . . . .” Such is not the case. The issue [wife] wants us to decide is whether the chancellor was correct in determining that the Circuit Court for Montgomery County was without jurisdiction under our statute by virtue of the Texas decree to determine whether [husband’s] military retirement pay is a part of the marital estate. This order in no way can be said to be one “entered with regard to the possession of property . . . .” It simply fails to come within the statute authorizing an interlocutory appeal.

*Id.* at 184.

In *Rustic Ridge, LLC v. Washington Homes, Inc.*, 149 Md. App. 89 (2002), Washington Homes sued Rustic Ridge, alleging that Washington Homes was the “proper and rightful owner” of certain land. *Id.* at 91. Washington Homes moved for partial summary judgment on the declaratory judgment count, which the court granted, finding that Washington Homes was the “proper and rightful owner.” *Id.* Rustic Ridge appealed, claiming that the partial summary judgment was an appealable interlocutory order under CJP § 12-303(1). *Id.* at 95. The Court, however, concluded that the “trial court merely declared that Washington Homes was the rightful owner of the property; it did not address whether Washington Homes had the present right to possess the property as well.” *Id.* at 96.

In *Abner v. Branch Banking & Trust Co.*, 180 Md. App. 685 (2008), we dismissed an appeal where the challenged ruling had “no direct bearing on the possession of the proceeds” from the sale of property under CJP § 12-303(1). *Id.* at 692. There, Ms. Abner obtained a money judgment against Mr. Wiggins and his corporation. *Id.* at 687. After the defendants were found liable, Mr. Wiggins and his wife, sole partners of a partnership, converted their partnership to a limited liability partnership and passed its sole asset to the limited liability partnership. *Id.* Later, Ms. Abner obtained a charging order against Mr. Wiggins’s interest in the limited liability partnership. *Id.* at 688. To collect on the judgment, Ms. Abner initiated a fraudulent conveyance action against, *inter alia*, Mr. Wiggins, his wife, the partnership, the limited liability partnership, and the corporation, alleging that the proceeds from the alleged sale of the asset should have been transferred to her to pay the judgment. *Id.* at 688. One defendant filed a motion to dismiss. The court granted the motion and dismissed that party from the lawsuit. *Id.*

Ms. Abner appealed, arguing that CJP § 12-303(1) authorized the interlocutory appeal because she was entitled to possession of the proceeds of sale as a judgment creditor. *Id.* at 690. We stated that Ms. Abner had no right to appeal because

[she] has no present right to possession and whether such right may ultimately exist is speculative. As of September 2002, [Ms. Abner] has been a judgment creditor of [Mr. Wiggins] and [the corporation]. In January 2006, [she] obtained an order charging [Mr. Wiggins]’s interest in [the limited liability partnership] for the amount of her unpaid judgment. Notwithstanding the charging order, [Ms. Abner] has never been a creditor of [the limited liability partnership]. Because [Ms. Abner] is not a judgment creditor of [the limited liability partnership], she would not be entitled to possession of the proceeds of the sale.

*Id.* at 692-93; *see also McCormick Constr. Co., v. 9690 Deerco Rd. Ltd. P’ship*, 79 Md. App. 177, 181 (1989) (holding that CJP § 12-303(1) did not authorize an appeal from an interlocutory order that stayed a mechanic’s lien action pending arbitration even though the imposition of a mechanic’s lien might result in a right of possession).

In the instant matter, the rulings from which Wife seeks to appeal have no direct bearing on the possession of the proceeds held in the court’s registry. The court expressly declined to determine, absent an evidentiary hearing, the character of the funds and any specific entitlements to them. After an evidentiary hearing, the court may well determine that part or all the funds are marital property, establish the parties’ respective entitlements to them, and order the registry to distribute the funds accordingly. But when the court ruled on the two motions, the parties’ respective rights to possess those funds were speculative. Accordingly, the case does not fall within the ambit of CJP § 12-303(1).

**CJP § 12-303(3)(v)**  
**Sale, Conveyance, or Delivery of Property; Payment of Money**

The interlocutory rulings are not appealable under CJP § 12-303(3)(v). Clearly, the court’s denial of Wife’s motions did not bear on the sale, conveyance, or delivery of property, because the sale of the Hyattsville property and the transfer of the net proceeds of sale into the court’s registry predated the challenged rulings.

Likewise, the court’s rulings were not “for the payment of money.” CJP § 12-303(3)(v) does not allow for the appeal of *any* non-final order for the payment of money; instead, it only allows for an appeal from orders that are “equitable in nature.” *Anthony Plumbing of Maryland, Inc. v. Attorney General*, 298 Md. 11, 20 (1983). This includes

alimony, child support, and domestic relations orders, as well as orders concerning assignments for the benefits of creditors. *Id.* at 20 (citations omitted). The “common thread” in cases involving the payment of money under CJP § 12-303(3)(v) “is that each involves an order for a specific sum of money which ‘proceeds directly to the person[.]’” *Id.* (quoting *Della Ratta v. Dixon*, 47 Md. App. 270, 285 (1980) (citations omitted)). Here, neither ruling ordered the payment of a specific sum of money.

For the foregoing reasons, we hold that the rulings denying the motion *in limine* and the motion to reconsider are not appealable under CJP § 12-303(1) and (3)(v), and, therefore, the appeal is dismissed.

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