

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2249

September Term, 2015

MOHAMED LAMIN JANNEH

v.

RUGIATU JANNEH

Eyler, Deborah S.,
Kehoe,
Shaw Geter,

JJ.

Opinion by Kehoe, J.

Filed: December 15, 2016

*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. *See* Md. Rule 1-104.

Mohamed Janneh appeals from a judgment of the Circuit Court for Prince George's County, the Honorable Cathy Hollenberg Serrette presiding, granting an absolute divorce, together with related relief, to Rugiatu Janneh. Mr. Janneh raises two issues, which we have reworded:

1. Did the trial court abuse its discretion when it denied his motion to strike Ms. Janneh's first amended counter-complaint for divorce and related relief?
2. Was the trial court's award of rehabilitative alimony to Ms. Janneh supported by the evidence?

We will affirm the trial court's judgment.

Background

On September 29, 2014, Mr. Janneh, acting *pro se*, filed a complaint for custody of the parties' two minor children. The circuit court later dismissed the complaint without prejudice. On April 14, 2015, appellant, now represented by counsel, filed an amended complaint, seeking custody, child support, and an absolute divorce. The complaint alleged that the parties voluntarily separated on March 14, 2014. Trial was initially scheduled for July 27, 2015, but was rescheduled to September 9, 2015.

On August 25, 2015, Ms. Janneh filed an amended counter complaint seeking, among other relief, rehabilitative alimony. The amended counter complaint was not timely filed, *see* Md. Rule 2-341 (requiring leave of the court to amend a pleading less than 30 days before a scheduled trial date), but, at least initially, Mr. Janneh did not object.

The trial was divided into two phases. It was during the first phase, on September 9, 2015, that Mr. Janneh's action for a divorce against Ms. Janneh ran into an unanticipated difficulty. He testified that the parties separated on August 24, 2014, that is, less than one

counter complaint, noting, “It seems that counsel wants to proceed on that pleading when it suits him and to strike it when it doesn’t suit him[.]”

The parties also raised issues about each other’s responsiveness to discovery requests. These included complaints about the timeliness and completeness of responses both earlier in the process, an issue which seems to have been raised at the first hearing, and also regarding compliance with the trial court’s instructions to exchange discovery between the September 9th hearing granting the divorce and the September 15th hearing on economic relief. The matter is somewhat hazy because the transcript for the September 9th proceeding was not provided to us as part of this appeal. The trial court responded that the discovery issues had been raised and decided on at the September 9th hearing and denied both parties’ motions.

The trial court ultimately denied Ms. Janneh’s request for attorney’s fees but awarded her rehabilitative alimony for two years.

Analysis

I. The Timeliness of Ms. Janneh’s Counter Complaint

In *Cave v. Mills*, 7 H. & N. 913, 927–28, 158 E. R. 740, 747 (1862), Baron Wilde stated:

[A] man shall not be allowed to blow hot and cold—to affirm at one time and deny at another[.] Such a principle has its basis in common sense and common justice, and whether it is called “estoppel,” or by any other name, it is one which Courts of law have in modern times most usefully adopted.

The concept of “judicial estoppel”—that litigants should not be permitted to take inconsistent positions to the detriment of other parties or the court—is well-established in

Maryland. *See, e.g., Dashiell v. Meeks*, 396 Md. 149, 170 (2006); *Underwood-Gary v. Mathews*, 366 Md. 660, 667 n.6 (2001); *Eagan v. Calhoun*, 347 Md. 72, 88 (1997); *Berrett v. Standard Fire Ins. Co.*, 166 Md. App. 321, 340 (2005), *aff'd*, 395 Md. 439 (2006); *Vogel v. Touhey*, 151 Md. App. 682, 722 (2003).

There is no question that Ms. Janneh’s amended counter complaint could have been filed only with permission of the trial court. *See* Md. Rule 2-341(b). On September 9th, Mr. Janneh “had no problem with” the trial court’s accepting the amended counter complaint for filing in order to be divorced from Ms. Janneh. Yet, on September 15th, he claimed that the amended counter complaint was untimely filed in an effort to defeat Ms. Janneh’s claims for attorney’s fees and rehabilitative alimony. Mr. Janneh’s attempt to have things both ways is the sort of “blowing hot and cold” that was condemned in *Cave*. To hold otherwise would be to offend the notions of “common sense and common justice” that are at the core of judicial decision making.

Our decision to invoke the doctrine of judicial estoppel is outcome-dispositive. Were we to consider the issue on its merits, we would conclude that the trial court did not abuse its discretion in allowing Ms. Janneh to proceed on her claims for economic relief.

Absent a mistake of law or clear error, we will reverse a trial court’s exercise of its discretion only if “the decision under consideration [is] well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *North v. North*, 102 Md. App. 1, 14 (1994). Moreover, a court’s “exercise of discretion is presumed correct until the attacking party has overcome such a

presumption by clear and convincing proof of abuse.” *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 725 (2002) (citing *Langrall, Muir & Noppinger v. Gladding*, 282 Md. 397, 401 (1978)).

At oral argument, Mr. Janneh’s counsel asserted that he was prejudiced because Ms. Janneh did not provide responses to his requests for discovery until shortly before the date of the second hearing. (The parties do not agree when exactly Ms. Janneh provided the responses to discovery but it appears to have been by a deadline set by the court, several days prior to the September 15 hearing.) The financial affairs of both parties appear to have been straightforward and Mr. Janneh does not point to any part of the second hearing in which Ms. Janneh’s evidence took him by surprise. He has failed to overcome the presumption that the trial court did not abuse its discretion.

II. Challenge to the Alimony Award

Mr. Janneh devotes a total of one paragraph in his brief to his contention that the trial court erred in granting Ms. Janneh rehabilitative alimony. He cites neither to case law nor the transcript. He did not include a copy of the relevant portions of the transcript in his record extract. This “go through the motions” advocacy violates Maryland Rule 8-501(c) (contents of record extract), and 8-504(a)(4) and (6) (contents of briefs). By failing to comply with these rules, Mr. Janneh has waived his right to challenge the alimony award on appeal. *See, e.g., HNS Dev., LLC v. People’s Counsel for Baltimore County*, 425 Md. 436, 458–59 (2012). We will not address his contentions other than to say that we find

unconvincing his argument that the trial court's written findings of facts did not support the alimony award.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE'S
COUNTY IS AFFIRMED. APPELLANT
TO PAY COSTS.**