

Circuit Court for Prince George's County
Case No.: CAE-1815505

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2117

September Term, 2019

PATRICIA ROBINSON

v.

MICHELE DARBEAU

Gould,
Zic,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: May 20, 2021

*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 involves the disintegration of a personal and business partnership in which the parties jointly owned two pieces of real property, one of which served as their residence, and the other as the site of their daycare business. One of the parties filed the instant lawsuit to compel the sale of the two properties as well as the business. The court dismissed the claim regarding the business, and then granted the request to sell the two properties. The other party claims that the circuit court abused its discretion in doing so. We disagree and affirm.

BACKGROUND

Patricia Robinson and Michelle Darbeau jointly owned two real estate properties, the “Livingston Property”¹ and the “Arya Property.”² They also ran a childcare business called Little Foot Enrichment Learning Center, LLC (“Little Foot”), a Delaware limited liability company. Little Foot was operated out of the Livingston Property. The Arya Property served as the parties’ residence.³ The parties lived together and jointly operated Little Foot until May 2017.⁴

¹ The Livingston Property is located at 15404 Livingston Road, Accokeek, Maryland 20607.

² The Arya Property is located at 12911 Arya Drive, Brandywine, Maryland 20613

³ Both parties acknowledge a personal relationship, and although they dispute its nature and extent, we need not delve into that aspect of their dispute to resolve this appeal.

⁴ Little Foot is not a named party on the deed for either property.

In May 2017, the parties severed their personal and business relationships, with Ms. Darbeau vacating the Arya property and terminating her involvement in the operations of Little Foot.

One year later, Ms. Darbeau filed an action in the Circuit Court for Prince George’s County seeking a sale in lieu of partition of the two properties and a forced sale or dissolution of Little Foot. The latter request was predicated on her allegation that she was a co-owner of Little Foot.

Ms. Robinson responded with a counterclaim to compel Ms. Darbeau to pay her proper share of various expenses related to the two properties, including mortgage payments, property taxes, and expenses related to improvements. Ms. Robinson also alleged that she was the sole owner of Little Foot, and that Ms. Darbeau was merely an employee. She further alleged that Ms. Darbeau stole money from Little Foot and otherwise breached her fiduciary duties to the business.⁵

On February 26, 2019, the court entered an order scheduling a pre-trial conference for June 20, 2019. The trial date of November 12, 2019 was set at the pre-trial conference.

On June 4, 2019, Ms. Robinson moved for partial summary judgment against Ms. Darbeau’s request for the sale or dissolution of Little Foot. Ms. Robinson argued that the court did not have subject-matter jurisdiction to order a sale or dissolution of an LLC incorporated in Delaware. Ms. Darbeau countered that she was not seeking a dissolution of Little Foot, but rather a sale of the daycare business that was “an asset of” Little Foot.

⁵ Ms. Robinson filed suit in her personal capacity and not on behalf of Little Foot.

Further, she argued that the court had subject-matter jurisdiction over the sale of the business because Little Foot’s “principal place of business” was in Prince George’s County.

A hearing on Ms. Robinson’s motion was held on August 9, 2019. Following the hearing, the circuit court granted Ms. Robinson’s motion in part. The court exercised its discretion under the internal affairs doctrine by directing that all disputes over the “membership or the internal operations of” Little Foot, including “the forced sale of any asset actually owned by the LLC and/or the dissolution of the LLC,” be determined by the appropriate court in Delaware.⁶ The only claims of Ms. Darbeau’s that remained before the circuit court were her requests for a judicial sale in lieu of partition of both the Livingston and Arya properties.⁷

On October 7, 2019, Ms. Robinson moved to stay the remaining proceedings pending the outcome of any Delaware litigation—which had not yet been filed—about the ownership of Little Foot.⁸ Ms. Robinson argued that her claims against Ms. Darbeau for

⁶ The internal affairs doctrine vests our courts with discretion to decline to exercise jurisdiction over disputes involving the internal affairs of foreign corporations. *Tomran, Inc. v. Passano*, 391 Md. 1, 17-18 (2006).

⁷ The court gave its decision orally at the conclusion of the August 9, 2019 hearing. An order memorializing that decision was signed on October 28, 2019, but it does not appear that the written order was ever entered in the docket.

⁸ Ms. Robinson represented in the body of her motion that she “has initiated an action in Delaware” to resolve her claims of an ownership interest in Little Foot. In a footnote, however, Ms. Robinson revealed that she had only “begun the process of retaining counsel in Delaware.”

embezzlement and breach of fiduciary duty were inextricably linked to, and dependent on, resolution of the parties’ dispute over Ms. Darbeau’s claim of an ownership interest in Little Foot. She also argued that: (i) Ms. Darbeau’s request for sale in lieu of partition should not be decided until the claims involving Little Foot were resolved; (ii) once Little Foot’s ownership was established, the court would have a basis “to not order a sale at all”; (iii) the amount owed to her by Ms. Darbeau would exceed the proceeds that Ms. Darbeau would receive if the properties were sold; (iv) because the court had “wide equitable discretion” and the “existing equities already reflect[ed]” an imbalance of contributions to the properties, a stay was necessary; and (v) Ms. Darbeau’s request for sale of the properties was barred by the doctrine of unclean hands.⁹ Ms. Robinson supported her motion with deposition testimony, appraisals, mortgage statements, assessment values for the properties, and an allocation summary of mortgage payments.

Ms. Darbeau opposed Ms. Robinson’s motion. She disputed Ms. Robinson’s description of the equities, arguing that she had made substantial personal contributions to the properties. Ms. Darbeau provided exhibits of wire transfers detailing these payments and described her ownership interests in the properties.

Regarding Ms. Robinson’s unclean hands defense, Ms. Darbeau responded that her:

⁹ The “unclean hands” doctrine is an equitable defense designed to “prevent the court from assisting in fraud or other inequitable conduct” by a plaintiff. *Mona v. Mona Elec. Group, Inc.*, 176 Md. App. 672, 714 (2007). The material principle behind the doctrine is to deny relief to a plaintiff who has unclean hands “in acquiring the right [s]he now asserts” before the court. *Hicks v. Gilbert*, 135 Md. App. 394, 400-01 (2000). Here, because there is no allegation of fraud or misconduct in the deeds or the acquisition of the properties, the doctrine is inapplicable.

interest in the two jointly held properties and her interest in the Business are two (2) separate issues. [Ms. Robinson] has throughout this entire litigation made an extreme effort to remove the Business as a part of this matter. Now, when it suits her own agenda, and after the Court granted her Motion for Partial Summary Judgment to remove the Business from this litigation, [Ms. Robinson] is seeking through this Motion to bring the Business back into consideration. [Ms. Darbeau] has the right to have the two jointly held properties sold irrespective of whether [Ms. Robinson] is successful in her Counterclaim. [Ms. Darbeau] therefore does not have unclean hands by forcing the sale of the properties, and if [Ms. Robinson] is successful in the declaratory action she has stated she will file in Delaware regarding the ownership of the Business, she will have the ability to pursue her Counterclaim at that time. Again, [Ms. Robinson] has yet to file any litigation in Delaware regarding the ownership of the Business and has yet to even execute a retainer letter with a Delaware attorney. [Ms. Darbeau] should not be forced to wait indefinitely to be liberated from the two jointly held properties and to receive her fair share of the sales proceeds.

On October 28, 2019, the court signed an order (the “October 28 Order”) staying Ms. Darbeau’s counterclaim pending resolution of the dispute over Little Foot’s ownership in Delaware but did not stay Ms. Darbeau’s petition for sale in lieu of partition.¹⁰

On November 12, 2019, the court held a hearing on Ms. Darbeau’s petition for sale in lieu of partition. Ms. Robinson’s counsel informed the court that Ms. Robinson had filed a case in Delaware on October 25, 2019 to resolve the ownership dispute over Little Foot. At the conclusion of the hearing, the court orally granted the petition. The decision was memorialized in an order signed on November 25, 2019 (the “November 25 Order”).¹¹

Ms. Robinson filed a notice of appeal on December 23, 2019. The notice stated that Ms. Robinson was appealing both the October 28 Order denying her request for a stay of

¹⁰ This order was not entered by the court until December 26, 2019.

¹¹ The order was not entered on the docket until December 4, 2019.

Ms. Darbeau’s petition for sale in lieu of partition and the November 25 Order granting Ms. Darbeau’s petition.

Ms. Robinson presents the following two questions for our consideration, which we have slightly rephrased:¹²

1. Was it an abuse of discretion for the circuit court to deny a stay of the sale in lieu of partition of real property while staying the counterclaim?
2. Was it an abuse of discretion for the court to order a sale in lieu of partition of real property?

MOTION FOR STAY PENDING APPEAL

On May 5, 2021, Ms. Robinson filed a motion in this Court requesting a stay of the sale of the two properties pending this appeal.¹³ This opinion renders that motion moot.

¹² Ms. Robinson’s questions were:

1. Is it abuse of discretion to deny a stay of sale in lieu of partition of real property, while staying a counterclaim which would substantially affect the parties’ equities, including respective contributions and allegations of “unclean hands”?
2. Is it abuse of discretion to order a sale in lieu of partition of real property, when a court affirmatively elects to not receive any evidence of the parties’ equities despite its availability, and one party’s proffer of greatly-disparate equities that could exceed any profits from a sale?

¹³ It did not escape our attention that in moving for the stay in this Court, Ms. Robinson did not disclose that the parties received a decision from the Chancery Court in Delaware finding that Ms. Darbeau is an owner of Little Foot.

DISCUSSION

I.

JURISDICTION

Appellate jurisdiction in Maryland is conferred by statute. *Gisriel v. Ocean City Bd. of Sup'rs of Elections*, 345 Md. 477, 485 (1997). Generally, a litigant may only appeal from a “final judgment.” Md. Code Ann., Courts and Judicial Proceedings Article (“CJP”) § 12-301 (1974, 2020 Repl. Vol.); *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 65 (2017). To be considered final, a judgment:

(1) . . . must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2–602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2–601.

Rohrbeck v. Rohrbeck, 318 Md. 28, 41 (1989).

There are three exceptions to this general rule. Specifically, an appeal of an interlocutory order is permitted if: (1) allowed by a statute, such as CJP §§ 12-303 or 12-304; (2) allowed under Maryland Rule 2-602(b); or (3) allowed under the common law collateral order doctrine. *Shoemaker v. Smith*, 353 Md. 143, 165 (1999). If an order is neither final nor falls within an exception, an appellate court lacks jurisdiction to hear the appeal. *See Gruber v. Gruber*, 369 Md. 540, 546 (2002).

Ms. Robinson appeals from two interlocutory orders. The appeal from the November 25 Order granting the petition for sale in lieu of partition is permissible under CJP § 12-303(3)(v), which allows for the appeal of an interlocutory order “[f]or the sale, conveyance, or delivery of real or personal property[.]” The appeal from the October 28

Order denying the stay of the sale of the properties, however, does not fall within an exception and would ordinarily not be appealable. *See Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 283 (2009) (the denial of a stay of a court’s own proceedings “is not equivalent to the denial of an injunction”). But here, Ms. Robinson’s appeal of the order for the sale of the two properties rests largely on her contention that the court should have stayed Ms. Darbeau’s petition until both the Delaware litigation and the counterclaims in this litigation were resolved. Because the two orders are inextricably linked in Ms. Robinson’s arguments on appeal, we have jurisdiction to address Ms. Robinson’s appeal of both orders. *See Frey v. Frey*, 298 Md. 552, 556-57 (1984).

II.

ANALYSIS

A petition for a sale in lieu of partition is governed by Section 14-107(a) of the Real Property Article of the Maryland Code Ann. (1974, 2015 Repl. Vol.), which states:

A circuit court may decree a partition of any property, either legal or equitable, on the bill or petition of any joint tenant, tenant in common, parcener, or concurrent owner, whether claiming by descent or purchase. *If it appears that the property cannot be divided without loss or injury to the parties interested, the court may decree its sale and divide the money resulting from the sale among the parties according to their respective rights.*

(Emphasis added).

This statute is augmented by Maryland Rule 12-401, which provides:

(a) Scope. This Rule applies in any action where the relief sought is the partition of real or personal property or the sale of real or personal property in lieu of partition.

(b) Judgment for Sale.

(1) *When Permitted.* When the relief sought is a sale in lieu of

partition, the court shall order a sale only if it determines that the property cannot be divided without loss or injury to the parties interested.

(2) *Conduct of Sale.* The sale shall be conducted in the manner provided by Title 14, Chapter 300 of these rules.

(c) Judgment for Partition.

(1) *Appointment of Commissioners.* When the court orders a partition, unless all the parties expressly waive the appointment of commissioners, the court shall appoint not less than three nor more than five disinterested persons to serve as commissioners for the purpose of valuing and dividing the property. On request of the court, each party shall suggest disinterested persons willing to serve as commissioners. The order appointing the commissioners shall set the date on or before which the commissioners' report shall be filed. The commissioners shall make oath before a person authorized to administer an oath that they will faithfully perform the duties of their commission. If the appointment of commissioners is waived by the parties, the court shall value and divide the property.

(2) *Report of Commissioners.* Within the time prescribed by the order of appointment, the commissioners shall file a written report. At the time the report is filed the commissioners shall serve on each party pursuant to Rule 1-321 a copy of the report together with a notice of the times within which exceptions to the report may be filed.

(3) *Exceptions to Report.* Within ten days after the filing of the report, a party may file exceptions with the clerk. Within that period or within three days after service of the first exceptions, whichever is later, any other party may file exceptions. Exceptions shall be in writing and shall set forth the asserted error with particularity. Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise. The court may decide the exceptions without a hearing, unless a request for a hearing is filed with the exceptions or by an opposing party within five days after service of the exceptions.

(d) Costs. Payment of the compensation, fees, and costs of the commissioners may be included in the costs of the action and allocated among the parties as the court may direct.

In addition, if the circuit court orders a judicial sale under Rule 12-401, then the Title 14, Chapter 300 rules for judicial sales apply. Rule 14-302 provides that a court may

order a sale and appoint a trustee to make the sale “if satisfied that the jurisdictional requisites have been met and that the sale is appropriate.”¹⁴

Trial courts are vested with “broad discretionary authority” over requests for a sale in lieu of partition of real property. *Maas v. Lucas*, 29 Md. App. 521, 525 (1975). The trial court’s exercise of discretion “will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003) (emphasis omitted) (quotation omitted).

At the bench trial, Ms. Robinson’s counsel stipulated that the jurisdictional prerequisites for a sale in lieu of partition were met. The court took evidence as to the values of the two properties and the amounts of any mortgages. The court found that there was equity in the properties and that Ms. Darbeau no longer wanted to own the properties with Ms. Robinson. The court specifically acknowledged the discretionary nature of its decision and that it was “exercising [its] discretion to order the sale.” The court further explained that it had read the motions papers and was aware of Ms. Robinson’s arguments against the sale of the properties.

¹⁴ Rule 14-302 states in full:

(a) When Court May Order. At any stage of an action, the court may order a sale if satisfied that the jurisdictional requisites have been met and that the sale is appropriate.

(b) Appointment of Trustee. When the Court orders a sale it may appoint a trustee to make the sale. The trustee shall be a natural person.

Ms. Robinson does not contest the court’s finding that the prerequisites for a judicial sale in lieu of partition were satisfied, but instead argues that the court did not appreciate that it could consider equitable issues in determining whether to grant Ms. Darbeau’s petition. According to Ms. Robinson, the equitable factors that should have been considered by the court included the extent of Ms. Darbeau’s debt for embezzlement, her breach of her fiduciary duties, her failure to pay for the expenses of the properties, and whether her debt may be fully paid out of her share of any sales proceeds. Ms. Robinson further maintains that such factors could not have been considered until the Delaware court ruled on the ownership issue and the trial court adjudicated Ms. Robinson’s counterclaims. Thus, according to Ms. Robinson, the court erred both in denying her request to stay Ms. Darbeau’s petition and in subsequently granting Ms. Darbeau’s petition.

We are not persuaded. The corporate issues raised by Ms. Darbeau were dismissed under the internal affairs doctrine at Ms. Robinson’s request, not Ms. Darbeau’s. Ms. Robinson made the strategic decision to litigate the overall dispute in separate jurisdictions, and she knew or should have known that the circuit court had no obligation to put this case on hold pending resolution of the Delaware litigation. In that sense, Ms. Robinson took a calculated risk by invoking the internal affairs doctrine. As we explain below, given the timing of the relevant events in this case, we can find no abuse of discretion in the trial court’s failure to alleviate the adverse consequences of the strategy that Ms. Robinson intentionally pursued.

Trial courts are vested with broad discretion on how to manage their dockets. *Heit v. Stansbury*, 215 Md. App. 550, 568 (2013). Under Rule 2-504(c), “[t]he scheduling order

controls the subsequent course of the action but shall be modified by the court to prevent injustice.” And, Rule 1-201(a) requires trial court to construe the rules “to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.”

The timing of Ms. Robinson’s actions undermined these aspirational principles. The parties knew since the June 26 pretrial conference that the trial would begin on November 12. Ms. Robinson invoked the internal affairs doctrine on June 4 when she moved for partial summary judgment, but she did not move for a stay until October 7, just one month before trial. During that time, and even though the court granted her motion on the internal affairs doctrine on August 9, Ms. Robinson had not filed a lawsuit in Delaware, and in fact had only begun the process of retaining Delaware counsel. Under these circumstances, the trial court had an ample basis to deny Ms. Robinson’s request for a stay.

Similarly, we find no abuse of discretion in the court’s decision to grant Ms. Darbeau’s petition for a sale of the two properties. Ms. Robinson faults the court for not taking evidence or considering equitable factors. But the trial court explicitly confirmed that it considered the motions papers, understood Ms. Robinson’s arguments, and was exercising its discretion in ordering the sale. We presume that trial judges know and apply the law properly, and we do not require them to “spell out in words every thought and step of logic.” *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (quotation omitted). Here, the record clearly reveals that the court read and understood Ms. Robinson’s motion, which means that it considered—but was not persuaded by—the equitable factors identified by Ms. Robinson.

Finally, we note the trial court correctly understood that the business issues were separate from the personal issues regarding the two real properties. Based on the factual allegations contained in her counterclaim, Ms. Robinson’s claims for embezzlement and breaches of fiduciary duty appear to be claims that would belong to Little Foot, not to Ms. Robinson personally. *See George Wasserman & Janice Wasserman Goldsten Fam. LLC v. Kay*, 197 Md. App. 586, 609-10 (2011) (distinguishing between claims belonging to the LLC and claims belonging to a member for injuries sustained by the member). Little Foot was not a party to the litigation. Thus, we cannot find fault in the trial court’s reluctance to predicate the resolution of Ms. Darbeau’s request for the sale of the properties on the resolution of a dispute concerning the ownership and operations of Little Foot.

**MOTION FOR STAY PENDING APPEAL
DENIED AS MOOT. JUDGMENT OF THE
CIRCUIT COURT FOR PRINCE
GEORGE’S COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**