Circuit Court for Prince George's County
Case No. CAD17-05214

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2718

September Term, 2018

ANGELO CRUMP

v.

ELAINE CRUMP

Arthur,
Shaw Geter,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 3, 2020

Angelo Crump ("Husband") and Elaine Crump ("Wife") were divorced by a decree of the Circuit Court for Prince George's County entered on January 3, 2018. That decree incorporated the marital property settlement agreement executed by the parties as of December 13, 2017, but that agreement was not merged into the judgment.

Husband sought declaratory relief determining that he was still within his rights, in accordance with the agreement, to refinance the loan on the marital home in order to purchase Wife's interest in it. The court denied his request for relief. Upon reconsideration, the court declined to revise its judgment.

Husband appealed. We agree with the circuit court's conclusion that Husband is not entitled to the relief that he requested. But because the court did not formally declare the parties' rights, we vacate the judgment and remand the case for the entry of a declaratory judgment in accordance with the court's ruling.

FACTUAL AND PROCEDURAL BACKGROUND

Husband and Wife were married in September 1989 and separated in October 2016. In February 2017, Husband filed a complaint for absolute divorce in the Circuit Court for Prince George's County.

By December 13, 2017, both parties had executed a Marital Property Settlement Agreement to determine their respective property rights, including the disposition of a jointly-owned marital home. In proceedings on the same day, the court granted Husband an absolute divorce. The judgment of absolute divorce was docketed on January 3, 2018. The terms of the settlement agreement were incorporated, but not merged, into the judgment, as indicated in paragraph 11 of the agreement itself:

> This Agreement in its entirety shall be submitted to the court in which their divorce action is filed to be ratified, approved, and incorporated, but not merged, into and made a part of the final decree or divorce order of that action. The parties each agree not to oppose such incorporation and they agree that subsequently this Agreement shall be enforceable as a part of said decree or independently as a contract between the parties. . . .

Paragraph 25 of the agreement provides that Husband would have 90 days to refinance the mortgage on the marital home and to purchase Wife's interest in the home. It further provides that if Husband did not purchase Wife's interest within 90 days, Wife would have the right to purchase Husband's interest in the home within the following 90 days. The agreement did not explicitly state when the 90 days would begin to run.

Paragraph 8 of the agreement states that "[t]ime is of the essence in the performance of all obligations set forth in this Agreement."

Finally, Paragraph 36 of the agreement states: "This Agreement shall become effective upon the date that both parties have affixed their signatures to the Agreement." Husband signed the agreement on December 12, 2017; Wife signed the agreement the following day, December 13, 2017.

On April 10, 2018, Wife filed a "Motion to Appoint Trustee for Buy-Out of Real Property." Arguing that Husband had failed to refinance the marital home by March 14, 2018 (90 days after the parties signed the agreement), she sought to exercise her right to purchase Husband's interest.[1] Wife indicated that she had already been approved for a

[1] In her initial brief, Wife used March 14 as the deadline, but thereafter alternated between March 13 and March 14 as the deadline for Husband to buy out her interest. For consistency, we shall use March 14, 2018.

loan to refinance the home, with a closing date set for May 1, 2018. Citing Husband's refusal to sign the quitclaim deed required to carry out the terms of the buy-out, Wife requested that a trustee be appointed to facilitate the closing as soon as possible. The court granted the motion and appointed a trustee.[2]

Meanwhile, on April 11, 2018, Husband filed what he called a "motion for declaratory judgment," wherein he asked the court to declare that he was within his rights to purchase Wife's interest in the home and to and "direct [Wife] to abstain from delaying the closing process." Husband claimed that he was ready, willing, and able to proceed with refinancing the home, but that an "unforeseen and unbeknownst" judgment lien had delayed his completion of the refinancing process. After he resolved the lien issue "in good faith," Husband alleged, Wife was uncooperative in signing the quitclaim deed and closing documents related to the settlement of the property, despite being provided with them on approximately March 29, 2018.

Wife opposed the request for declaratory relief. In accordance with her position that the settlement agreement became enforceable when the parties signed it, on December 13, 2017, Wife argued that Husband's 90-day period to refinance the home and purchase her interest had expired on March 14, 2018, along with his right to purchase her interest in the marital home.

[2] Ultimately, Wife was unable to effectuate the closing. Although Wife's trustee filed a motion for ratification of sale on November 15, 2018, the trial court denied the motion because the matter was already on appeal.

In an order entered on June 8, 2018, the circuit court denied Husband's "motion for declaratory judgment," without a hearing.[3]

On July 6, 2018, Husband filed a motion to vacate the order, which Wife opposed. On August 30, 2018, the court agreed to reconsider Husband's request for declaratory relief.

At a hearing, on September 14, 2018, Husband argued, for the first time, that the agreement did not become enforceable on December 13, 2017, when both parties had signed it, but rather on January 3, 2018, when the judgment for absolute divorce (into which the agreement was incorporated) was docketed. Accordingly, Husband claimed, the 90-day deadline did not run until April 4, 2018. Husband asserted that he would have been able to complete the purchase of Wife's interest by that date but for her lack of cooperation.[4]

[3] When a court adjudicates a request for declaratory relief, it must declare the rights of the parties, in writing. *See, e.g.*, *Bowen v. City of Annapolis*, 402 Md. 587, 608-09 (2007). The court must issue a written declaration even if the action is not decided in favor of the party seeking the declaratory judgment. *See, e.g.*, *Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 256 (2009). The court did not issue a written declaration when it denied Husband's request for declaratory relief in this case. Nonetheless, the error is not jurisdictional and is not fatal to our ability to reach the merits. *See, e.g.*, *Bowen v. City of Annapolis*, 402 Md. at 609.

[4] Husband introduced this previously unmentioned argument to the court as "argument A." In the alternative, if the court determined that the 90 days began to run on December 13, 2017, Husband was prepared to present "argument B," wherein he would concede that he was able to refinance "days later than what the 90-day period would have been," but would argue "frustration." Husband does not rely on his alternative argument in this appeal.

Wife maintained that the settlement agreement, which was incorporated but not merged into the judgment for absolute divorce, became enforceable as a contract on the day when it had been signed by all parties, December 13, 2017. Therefore, she argued, per the terms of the agreement, Husband's right to purchase her interest in the marital home ended 90 days thereafter, on March 14, 2018.

On September 29, 2018, after taking the matter under advisement, the court issued a memorandum and order denying Husband's motion. The court determined that the settlement agreement was enforceable as an independent contract. The language of that contract, the court explained, was "clear and unambiguous": the parties agreed that Husband "was given ninety (90) days from the date the agreement was signed" to refinance the house, which he was unable to do during that period.

Husband noted a timely appeal, wherein he poses a single question: "Whether the trial judge erred in holding that the Marital Separation Agreement became enforceable on its initial signing date instead of on the date of its incorporation into the Judgment of Absolute Divorce?"

For the reasons stated below, we agree that Husband is not entitled to the declaratory relief that he requested, but we shall remand the case for the entry of a proper declaratory judgment to that effect.

DISCUSSION

We must begin by clarifying what the issue before us is. On June 8, 2018, the court denied Husband's request for declaratory relief. Husband did not note an appeal

within 30 days of that order. Instead, on the twenty-eighth day, he filed what was, in substance, a motion to revise the judgment under Rule 2-535(a).[5]

The circuit court had an enormous amount of discretion to decide whether to revise or not to revise its earlier ruling under Rule 2-535(a). *See, e.g., Stuples v. Baltimore City Police Dep't*, 119 Md. App. 221, 232 (1998). The issue before us is whether the circuit court abused its discretion in not revising its earlier denial of Husband's requested declaration. *Id.*; *see also Furda v. State*, 193 Md. App. 371, 377 n.1 (2010) (stating that, "[w]hen a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion[]").

We review a trial court's decision to deny a motion for reconsideration for abuse of discretion. *See, e.g., Bennett v. State Dep't of Assessments & Taxation*, 171 Md. App. 197, 203 (2006). The court abuses its discretion when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles. *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997); quoting *North v. North*, 102 Md. App. 1, 13 (1994)). "Except to the extent that they are subsumed in [the question whether the trial court abused its discretion in denying a revisory motion], the merits of the judgment itself are not open to direct attack." *Stuples v. Baltimore City Police Dep't*, 119 Md. App. at 241 (citations omitted).

[5] Rule 2-535(a) provides, in pertinent part, as follows: "On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534."

Husband contends that the court erred as a matter of law in holding that the parties' settlement agreement became effective on the day it was signed. Instead, he argues, the agreement became valid and enforceable (and thus the 90-day refinance period began) only on the date the judgment of absolute divorce was entered into the docket. We disagree.

Citing *Hamilos v. Hamilos*, 297 Md. 99 (1983), Husband claims that a marital settlement agreement becomes valid only when it is approved and incorporated into a judgment of divorce. To support this proposition, he relies on the following quotation: "[T]he ratification, approval and incorporation of the agreement conclusively established the validity of the agreement . . . ." *Id.* at 105. But he omits the second half of the sentence: "so as to preclude a collateral attack by either party." *Id.* When this entire sentence is read, it becomes clear that the Court was not implying that an agreement becomes legally enforceable only when it is incorporated into a divorce decree. Rather, it was explaining that when an agreement is incorporated into a divorce decree, "the doctrine of *res judicata* precludes [a party] from collaterally attacking the agreement" in a subsequent proceeding. *Id.* at 104; *accord Johnston v. Johnston*, 297 Md. 48, 55 (1983)). *Hamilos* has nothing to do with whether a marital settlement agreement may be enforceable before it is incorporated into a divorce decree.

Husband also relies on Md. Rule 2-601(d), which states that "the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket." He reads that rule in conjunction with *Hobby v. Burson*, 222 Md. App. 1, 15 (2015), which states that "a judgment is only effective after it has been signed *and*

entered into the record for a particular case." Accordingly, he argues, the settlement agreement was not effective until the date the divorce judgment was entered into the electronic docket on January 3, 2018.

This argument suffers a fatal flaw: the agreement itself states that it became effective when both parties signed it, which was on December 13, 2017. Thus, the agreement, as an agreement, was enforceable, by its express terms, on December 13, 2017. The validity of the agreement might not have been *res judicata* until January 3, 2018, when it was incorporated, but not merged, into the judgment of divorce. But nothing prevented the agreement from becoming enforceable, as an agreement, as soon as both parties had signed it, on December 13, 2017.

At oral argument, Husband cited a portion of paragraph 11 of the agreement, which states: "The parties each agree not to oppose such incorporation [i.e., they agree not to oppose the incorporation of the agreement into a judgment] and they agree that subsequently this Agreement shall be enforceable as part of said decree or independently as a contract between the parties." Husband argued, in substance, that under this language it was a condition precedent to the effectiveness of the agreement for the agreement to be incorporated into the judgment of divorce.

Husband did not make this argument in the circuit court, whether in his original filing or his revisory motion. Consequently, he has not preserved the argument for appeal. *See* Md. Rule 8-131(a). We cannot fault the circuit court for failing to credit an argument that Husband did not make.

In fact, Husband did not even make this argument in his brief. For that reason, we need not address it. *See, e.g.*, *Oak Crest Village, Inc. v. Murphy*, 379 Md. 229, 241-42 (2004); *Campbell v. Lake Hallowell Homeowners Ass'n*, 157 Md. App. 504, 535 (2004).

Even if we were to address the argument, however, we would reject it. First, Husband's interpretation of paragraph 11 is at odds with the express language of the final paragraph of the agreement, which states that the agreement becomes effective as soon as both parties have signed it. Second, paragraph 11 does not use language normally associated with the creation of a condition precedent. *See Richard F. Kline, Inc. v. Shook Excavating & Hauling, Inc.*, 165 Md. App. 262, 273-74 (2005) (stating that, "[a]lthough no particular language is required to create a condition precedent, words and phrases such as 'if,' ' provided that,' 'when,' 'after,' 'as soon as' and 'subject to,' have commonly been associated with creating express conditions"). Finally, the language of paragraph 11 simply describes the state of affairs after an agreement has been incorporated, but not merged, into a divorce decree: under Md. Code (1984, 2019 Repl. Vol.), § 8-105(a)(2) of the Family Law Article, a settlement agreement that has been incorporated, but not merged, into a final divorce decree may be enforced by the court as a judgment or as an independent contract. Paragraph 11 does not create a condition precedent to the effectiveness of the agreement.

Here, the trial court examined the text of Husband and Wife's agreement, including the provisions regarding its incorporation into the divorce judgment and its effective date, and found it to be clear and unambiguous that the agreement became enforceable on the day it was signed by the parties. Accordingly, the judge determined

that Husband failed to refinance the marital home within ninety days of signing the agreement and declined to vacate the order denying Husband's motion for declaratory judgment. The court did not err or abuse its discretion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED; CASE REMANDED FOR ENTRY OF DECLARATORY JUDGMENT IN CONFORMANCE WITH THIS OPINION; COSTS TO BE PAID BY APPELLANT.