UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2455

September Term, 2015

VICTOR SAMUELS a/k/a VAUGHN SAMUELS

v.

JAMEELAH SAMUELS

Krauser, C.J.,
Graeff,
Nazarian,

JJ.

PER CURIAM

Filed: December 13, 2016

Victor Samuels, appellant, and Jameelah Samuels, appellee, were married and later divorced. Five children were born as a result of the marriage. The parties eventually reconciled and remarried in 2011.

A few years later, appellee filed a complaint for limited divorce in the Circuit Court for Howard County, claiming cruelty, excessively vicious conduct, and constructive desertion. Appellant filed a counter-complaint for absolute divorce claiming adultery, cruelty, excessively vicious conduct, and constructive desertion. Both complaints raised issues concerning the care and custody of the parties' minor children, and the court ultimately entered a *pendente lite* custody order.

Following a hearing on the merits, the circuit court denied both parties' complaints for divorce but did not issue any findings related to custody. On request of the children's best interest attorney, the court held another hearing and ordered that the *pendente lite* custody order remain in effect pending the outcome of a one-day evidentiary hearing, which was to be held before a Magistrate "to determine the issues of custody access and child support." Appellant subsequently noted this appeal, raising the following questions:

1. Did the trial court err in not granting appellant a divorce on the grounds of adultery?

2. Did the trial court err in not granting appellant a divorce on the grounds of constructive desertion?

3. Did the trial court err in reinstating the *pendente lite* consent order and *pendente lite* child support order without notice or a hearing?

4. Did the trial court err in allowing appellee to have her complaint for absolute divorce heard on the same day as the parties' one-day custody hearing?

5. Did the trial court err in allowing appellee to void the final custody order of September 9, 2009 immediately upon the reconciliation and remarriage of the parties on September 20, 2011?

Finding no error, we affirm. Because the parties are intimately familiar with the facts, we shall proceed directly to the merits of appellant's claims.

Appellant first argues that the trial court erred in denying his complaint for absolute divorce on the grounds of adultery. Appellant is incorrect. Under Section 7-101(b) of the Maryland Family Law Article, "[a] court may not enter a decree of divorce on the uncorroborated testimony of the party who is seeking the divorce." *Id.*[1] The only evidence presented by appellant in support of his adultery claim was his own uncorroborated testimony. Therefore, the trial court's denial of appellant's complaint for absolute divorce on these grounds was proper.

Appellant next argues that the trial court erred in denying his complaint for absolute divorce on the grounds of constructive desertion. Appellant is incorrect. Under Section 7-103(a)(2) of the Maryland Family Law Article, a court may issue a decree of divorce on the grounds of desertion if "there is no reasonable expectation of reconciliation[.]" *Id.* As the court found, however, neither party presented any evidence that there was no reasonable expectation of reconciliation between the parties. In short, appellant did not carry his *prima facie* burden of establishing constructive desertion. *See Dougherty v. Dougherty,* 187 Md. 21, 27 (1946) ("It is an established rule that the burden of proof in a suit for divorce is upon the complainant[.]").

[1] This requirement has since been repealed by the legislature; however, the repeal did not take effect until October 1, 2016. *See* 2016 Maryland Law Ch. 380 (H.B. 274).

Appellant's third argument is that the trial court erred in "reinstating" the *pendente lite* consent order and *pendente lite* child support order following the December 16th hearing. This issue, however, is not appealable. Except in very rare instances, none of which are applicable here, "a party may appeal only from a final judgment on the merits." *FutureCare NorthPoint, LLC v. Peeler*, 229 Md. App. 108, 143 A.3d 191, 196 (2016). "An order cannot be regarded as final in nature unless, among other things, the court intends for it to be 'an unqualified, final disposition of the matter in controversy.'" *Frase v. Barnhart*, 379 Md. 100, 115 (2003) (internal citations omitted).

Here, the court's order stated that the *pendente lite* orders "shall remain in effect pending further Order of this Court[.]" The order then stated that an evidentiary hearing was to be held "to determine the issues of custody access and child support." The court's order was not intended to be a final disposition of the parties' custody dispute.

Appellant's fourth contention is that the court erred "by allowing [appellee] to have her new complaint for absolute divorce…combined with her original complaint for limited divorce." Appellant claims that this allowed appellee "to request child support from [appellant] even though he was a stay-at-home dad at the time she filed and simultaneously eradicate[d] [his] grounds for divorce of adultery, constructive desertion, and cruelty/vicious conduct."

Appellant is mistaken. The court's decision to consolidate the parties' cases was an administrative one and had no effect on the parties' rights under the law.

Appellant's final contention is that the trial court erred "by allowing [appellee] to void the final custody order of September 9, 2009 upon the reconciliation/remarriage of

the parties" and to "relitigate custody." Appellant seems to be referring to a custody order that was entered by the Circuit Court for Howard County following the parties' first divorce, which he claims remained in effect despite the parties' reconciliation and remarriage. Even if appellant is correct, we note that "Section 1-201(b)(4) of the Family Law Article specifically authorizes a court that has exercised jurisdiction over the custody of a child to 'from time to time, modify its decree or order concerning the child.'" *Nodeen v. Sigurdsson,* 408 Md. 167, 179 (2009). Thus, the trial court did not err, as the relitigation of a custody order is expressly authorized by statute.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.