UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 640

September Term, 2016

CHARLES J. GETSON, II

v.

CARRIE DISIMONE GETSON
n/k/a CARRIE ANN DISIMONE

Graeff,
Berger,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: April 14, 2017

Charles Getson, appellant, and Carrie Disimone, appellee, were divorced by way of judgment entered in the Circuit Court for Garrett County. As part of that judgment, the court ordered that the parties' marital home be immediately listed for sale. Approximately two-and-one-half years later, the home had yet to be listed. Appellee thereafter filed a "Motion to Modify," asking that the court modify the judgment of divorce and enter an order authorizing her to purchase the home for market value. The court granted appellee's motion, and appellant noted this appeal, presenting the following question for our review:

> Did the circuit court err by modifying the terms of the parties' divorce judgment outside of the 30-day period provided by Maryland Rule 2-535?

For reasons to follow, we answer appellant's question in the negative and affirm the judgment of the circuit court.

BACKGROUND

On August 1, 2013, the circuit court entered a judgment granting appellant an absolute divorce from appellee (hereinafter the "Divorce Judgment"). As part of that judgment, appellee was awarded sole physical custody of the parties' two minor children, who, at the time of the divorce, had lived in the parties' marital home their entire lives. The Divorce Judgment also included the following language regarding the marital home:

> ORDERED, that the parties' marital home…shall be sold and the net proceeds of sale shall be divided equally between the parties. The marital home shall be immediately listed for sale with Bill Weisberger of Railey Realty. Bill Weisberger shall set the list price in accordance with his opinion of value. [Appellee] shall cooperate in selling the house, keeping the house clean and facilitating viewings. [Appellee] shall have exclusive use and possession of the marital home and shall maintain the mortgage payment pending sale[.]

Over the next several years, appellee and the minor children continued living in the marital home, and appellee continued making the home's mortgage payments; however, for reasons not made clear in the record, the marital home was never listed for sale. On or about February 8, 2016, appellee filed a "Motion to Modify," in which she asked the court to modify the Divorce Judgment and enter an order allowing the marital home to be reappraised and granting her the authority to purchase the home at its appraised value.

Following a hearing, the court granted appellee's motion and, on May 5, 2016, entered an "Order Granting Modification."[1] In so doing, the court found that there had been "material changes in circumstances subsequent to the August 1, 2013 Divorce Judgment" and that "further delay in the sale of the home would allow [appellant] to gain from the accumulation of equity in the marital home." The court also found that allowing appellee to purchase the home would be in the minor children's best interest because they had "lived in the home their entire lives" and had "a continued need to live in the home."[2] As a result, the court ordered that appellee be given "first option to purchase the home at fair market value" and that she be given credit for one-half of the mortgage payments made subsequent to the divorce "as an off-set to be deducted from [appellant's] portion of the net proceeds."

[1] Appellant does not dispute the court's findings of fact.

[2] At the time, the children were nine and sixteen years old.

DISCUSSION

Appellant argues that the circuit court erred in granting appellee's motion to modify the Divorce Judgment. Appellant maintains that if a motion to modify a judgment, including a divorce decree, is filed more than thirty days after the judgment is entered, a court cannot revise the judgment without a showing of fraud, irregularity, or mistake. Because the Divorce Judgment was more than thirty days old, and because appellee never made any showing of fraud, irregularity, or mistake, appellant avers that the court lacked the power to revise the judgment. For this reason, appellant contends that the Order Granting Modification must be reversed and the terms of the Divorce Judgment must be reinstated.

A circuit court's revisory power over its judgments is governed, generally, by Section 6-408 of the Courts and Judicial Proceedings Article of the Maryland Code and Maryland Rule 2-535. CJP § 6-408 provides that "[f]or a period of 30 days after the entry of a judgment, or thereafter pursuant to motion filed within that period, the court has revisory power and control over the judgment." *Id.; See also* Maryland Rule 2-535(a) ("On a motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment[.]"). During this time period, the judgment is "unenrolled" and the court's discretion to revise is broad. *Dixon v. Ford Motor Co.*, 433 Md. 137, 157 (2013).

After the 30-day time period has expired, however, the judgment becomes "enrolled" and the court may exercise revisory power over the judgment "only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk's office

to perform a duty required by statute or rule." Md. Code, Courts and Judicial Proceedings § 6-408; *See also* Md. Rule 2-535(b) ("On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity."). "Accordingly, after a judgment has become enrolled…a court has no authority to revise that judgment unless it determines, in response to a motion under Rule 2-535(b), that the judgment was entered as a result of fraud, mistake, or irregularity." *Thacker v. Hale,* 146 Md. App. 203, 216-17 (2002). "This dictate 'embraces all the power the courts of this State have to revise and control enrolled judgments and decrees.'" *Platt v. Platt*, 302 Md. 9, 13 (1984) (internal citation omitted).

Despite the above language, a court's power to revise an enrolled judgment is not *always* limited to cases of fraud, mistake, or irregularity. Such power may be expanded in certain contexts, either "by enactment of additional legislation or by changes in the Maryland Rules." *Id.* at 15. In other words, while CJP § 6-408 and Rule 2-535 encompass a circuit court's general revisory power over all judgments, any limitations in these powers may, in certain instances, be expanded or modified by statute. *See Shapiro v. Shapiro*, 346 Md. 648, 666 (1997) ("**Unless a statute otherwise provided**, that aspect of the [enrolled judgment] was subject to modification only for fraud, mistake, or irregularity.") (emphasis added).

For instance, a court's power to modify an enrolled child support order is not limited solely to cases of fraud, mistake, or irregularity; rather, such an order may be modified at any time upon a filing of a motion for modification and a showing of a material change in circumstance. Md. Code, Family Law § 12-104; *See also Knott v. Knott,* 146 Md. App.

232, 262 (2002) ("If the issue…is the modification of a final enrolled order [regarding child support], then the appropriate standard for modification is 'material change in circumstances.'"); *Lieberman v. Lieberman*, 81 Md. App. 575, 591 (1990) ("The child support award is always modifiable."). A court may also modify or set aside most provisions of an enrolled paternity order "as the court considers just and proper in light of the circumstances and in the best interests of the child." Md. Code, Family Law § 5-1038(b). Likewise, a court has the discretion to modify the amount of alimony awarded in an enrolled judgment, provided that the judgment does not contain language stating that alimony is non-modifiable or has been waived. Md. Code, Family Law § 11-107(b).

The Family Law Article of the Maryland Code provides a similar exception regarding use, possession, and disposition of the "family home" during and after a divorce. Section 8-201(c)(1) defines "family home" as "property in this State that: (i) was used as the principal residence of the parties when they lived together; (ii) is owned or leased by 1 or both of the parties at the time of the proceeding; and (iii) is being used or will be used as a principal residence by 1 or both of the parties and a child." *Id.* When real property qualifies as the family home, "the court may award use and possession of that property to the spouse with physical custody of the parties' minor child, for a period of up to three years after the divorce." *Hart v. Hart*, 169 Md. App. 151, 159 (2006) (*citing* Md. Code, Family Law §§ 8-208(a) and 8-210(a)). Depending on the circumstances, the court may order that such "use and possession" be exclusive to one party or shared by both parties. Md. Code, Family Law § 8-208. The court may also order either or both of the parties to pay the various expenses related to the maintenance of the home. *Id.*

Importantly, Section 8-209 of the Family Law Article expressly states that "[i]n a temporary order **or final order or decree**, each provision that concerns the family home…is subject, as the circumstances and justice may require, to: (1) the terms and conditions that the court sets; (2) the time limits that the court sets, subject to § 8-210 of this subtitle; and (3) **modification or dissolution by the court**." *Id.* (emphasis added). Moreover, Section 8-206 of the Family Law Article provides that "the court **shall** exercise its powers under §§ 8-207 through 8-213 of this subtitle: (1) to enable any child of the family to continue to live in the environment and community that are familiar to the child; and (2) to provide for the continued occupancy of the family home and possession and use of family use personal property by a party with custody of a child who has a need to live in that home." *Id.* (emphasis added).

Applying the above statutory authority to the instant case, we hold that the circuit court had the power to modify the Divorce Judgment and enter its Order Granting Modification. First, there is little question that the provision at issue concerned the "family home," as appellee, who maintained custody of the parties' minor children, testified that the marital home was her and the children's principal residence prior to and following the divorce. The record also makes clear that the provision at issue was, for all intents and purposes, a use and possession order, as the judgment expressly provided appellee "exclusive use and possession of the marital home…pending sale." *See Hart*, 169 Md. App. at 159. Consequently, the provision at issue was subject to modification under Family Law § 8-209. That the court did so based on the minor children's best interest makes the court's actions all the more appropriate, as Family Law § 8-206 dictates that a court

exercise these powers so that any minor children be allowed to continue living in the family home. *See Kennedy v. Kennedy*, 55 Md. App. 299, 303 (1983) ("[The use and possession statute] protects the interests of any minor child caught in the cross-fire of a divorce case, and ensures that such a child need not suffer the unsettling loss of his or her home during the course of the litigation."); *See also St. Cyr v. St. Cyr*, 228 Md. App. 163, 198 (2016) (discussing the applicability of § 8-206 to "divorce and related proceedings[.]).

In fact, had it not issued its Order Granting Modification in May of 2016, the court would have been required to revisit the issue several months later and would have been permitted to grant the same relief. Section 8-210 of the Family Law Article provides that "[i]n any order or decree, or any modification of an order or decree, a provision that concerns the family home…**shall** terminate no later than 3 years after the date on which the court grants an annulment or a limited or absolute divorce." Md. Code, Family Law § 8-210(a)(1) (emphasis added). The statute also provides that "[w]hen a provision that concerns the family home…terminates, the court **shall** treat the property as marital property if the property qualifies as marital property, and adjust the equities and rights of the parties concerning the property as set out in § 8-205 of this subtitle." Md. Code, Family Law § 8-210(c) (emphasis added). As part of its authority under § 8-205, a court is then permitted to "transfer ownership of an interest in [the family home] by…authorizing one party to purchase the interest of the other party in the [family home], in accordance with the terms and conditions ordered by the court[.]" Md. Code, Family Law § 8-205(a)(2).

Here, appellee was granted use and possession of the family home at the same time the divorce was granted, on August 1, 2013. Under the terms of the Divorce Judgment, the

use and possession period should have expired when the home was sold; however, this never happened. Consequently, under § 8-210(a)(1), the use and possession period would have automatically expired on August 1, 2016. At that time, the court would have been required, pursuant to § 8-210(c), to treat the home as marital property and adjust the equities and rights of the parties. In so doing, the court would also have been required, pursuant to § 8-206, to act in a manner consistent with the minor children's need to continue living in the family home. In short, the court would have been permitted, if not required, to do precisely what it did when it issued its Order Granting Modification, *i.e.*, authorize one party (appellee) to purchase the interest of the other (appellant) under terms that enabled the minor children to continue living in a familiar environment. It would be incongruous, therefore, for us to conclude that the court's power to modify the Divorce Judgment was limited solely to cases of fraud, mistake, or irregularity, when said modification would have been expressly authorized a mere three months later.

In sum, we hold that § 8-209 of the Family Law Article expressly authorized the court to modify the terms of the Divorce Judgment concerning use, possession, and disposition of the family home. Moreover, we find that strictly limiting the court's revisory power to cases of fraud, mistake, or irregularity would be inappropriate in this case, given that the relief granted by the court would have been statutorily permissible at the end of the use and possession period.

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