

Circuit Court for Anne Arundel County
Case No. C-02-FM-18-004616

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 817

September Term, 2022

DAVID PARKER

v.

SONYA PARKER

Berger,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: April 14, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

*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 appeal arises out of a divorce action in the Circuit Court for Anne Arundel County involving David Parker (“Husband”) and Sonya Parker (“Wife”). On November 9, 2020, the circuit court entered a judgment of absolute divorce that resolved all issues except for those related to marital property and attorneys’ fees. Approximately 18 months later, on April 20, 2022, the court entered a judgment in which the court identified the parties’ marital property and ordered Husband to pay to Wife a monetary award and attorneys’ fees. Husband appeals from that judgment.

In his appeal, Husband presents three questions, which we have rephrased for clarity.¹ They are:

1. Did the trial court’s failure to make its determination of marital property within 90 days of entering the judgment of absolute divorce, as set forth in § 8-203 of the Family Law Article of the Maryland Code, render its determination of marital property void?
2. Did the trial court abuse its discretion in awarding Wife a monetary award approximately 18 months after entering the judgment of absolute divorce, where the court had failed to make a determination of marital property within 90 days of that judgment?

¹ Husband phrased the questions as:

1. Did the trial court err when it violated Md. Fam. Law 8-203 by neglecting to issue a finding of marital vs. non-marital property within 90 days of the issuance of the judgment of divorce on November 19, 2020?
2. Did the trial court abuse its discretion by entering a monetary award nearly two years after the merits hearing, when no determination of marital vs. non-marital property was timely issued by the court?
3. Did the trial court abuse its discretion by entering an award for attorney’s fees nearly two years after the entry of the judgment of absolute divorce?

3. Did the trial court abuse its discretion in ordering Husband to pay attorneys’ fees to Wife approximately 18 months after entering the judgment of absolute divorce?

For reasons to follow, we answer all questions in the negative and affirm the judgment of the circuit court.

BACKGROUND

Husband and Wife were married in 2006. Two children were born as a result of the marriage. In November 2018, Wife filed for divorce. In January 2019, Husband filed a counter-complaint for divorce. Both parties asked the court to determine child custody and support and to identify, value, and distribute the parties’ marital property. Both parties also asked that the other party be ordered to pay a monetary award and attorneys’ fees. Wife requested that Husband be ordered to pay alimony.

A three-day merits hearing was held in February 2020, at which the trial court received all the requisite evidence to make a determination regarding the parties’ outstanding issues. At the conclusion of that hearing, the court informed the parties that it was holding the matter *sub curia* and that it would issue its ruling orally at a later date.

On June 22, 2020, the parties attended a remote hearing, at which the trial court issued its oral ruling. At the beginning of that hearing, the court informed the parties that it would be “making a ruling on custody, alimony, child support, everything but the monetary award.” The court stated that it needed additional time to “double check [the] numbers[.]” The court then reported its decisions on the divorce, child custody, child support, alimony, and use and possession of the marital home. At the conclusion of the

hearing, the court stated that it was planning to enter “the entire order,” including “the monetary award and the property[,]” within 14 days of the hearing.

On November 9, 2020, the trial court entered the judgment of absolute divorce (the “Divorce Judgment”). That judgment reflected the court’s oral rulings from the June 22, 2020 hearing. The judgment stated that, while the court had given “a detailed opinion on the record in open court regarding the issues of custody, child support, alimony, use of marital home, and tax credits[,]” the court had “reserved on the issues of marital property and a monetary award[.]” Later in the judgment, the court stated that it “shall issue a further order as to a monetary award.”

By September 2021, the trial court had yet to enter an order regarding the outstanding issues. On September 17, 2021, Wife’s counsel filed, via the circuit court’s electronic filing system, a letter addressed to the court inquiring as to the status of the court’s “ruling on the issues of monetary award, marital property, and counsel fees.” Counsel asked “if there is any further documentation or information that the court needs to issue an opinion and order on the remaining issues in the case.” It does not appear from the record that the court ever responded to counsel’s letter.

On April 20, 2022, approximately 18 months after entering the Divorce Judgment, the trial court entered a written opinion on the remaining issues (the “Marital Property Judgment”). In that opinion, the court included the following footnote:

The Court does acknowledge and apologizes for the delay in this case. The Court had considered all the evidence when preparing its ruling that was given on the record on June 22, 2020. The Court wanted additional time to re-examine the numbers before determining a monetary award. Unfortunately, the case then inadvertently fell through the cracks. All of the

numbers referred to in this opinion are based on the evidence as presented in February 2020 at the three-day merits hearing and the monetary award reflects those numbers and a consideration of all of the factors required in Md. Code, Family Law Article, § 8-205.

The trial court thereafter set forth its findings as to the parties’ marital property. For the property that was determined to be marital and subject to distribution, the court ordered that said property be distributed evenly between the parties. In addition, the court awarded Wife a monetary award of \$49,349.68. Finally, the court ordered Husband to pay Wife’s attorneys’ fees, which totaled \$16,704.72.

Following entry of the trial court’s Marital Property Judgment, Husband filed a Motion for Reconsideration, arguing that the court had violated § 8-203 of the Family Law Article (“FL”) of the Maryland Code by failing to enter that judgment within 90 days of entering the Divorce Judgment. Husband argued that the court’s order was therefore void. Husband also argued that the court’s award of attorneys’ fees was improper because the divorce proceeding had already concluded upon entry of the Divorce Judgment.

The trial court ultimately denied Husband’s motion. This timely appeal followed. Additional facts will be supplied below.

DISCUSSION

I.

Husband first contends that the trial court erred in failing to issue its Marital Property Judgment within 90 days of issuing its Divorce Judgment. He asserts that, pursuant to FL § 8-203, the court was not permitted to issue its determination of marital property beyond that 90-day period unless: the court expressly reserved such a power in

the Divorce Judgment; the court extended the time for making the determination within 90 days of entering the Divorce Judgment; and the parties consented to the extension. Husband contends that the court did not meet those requirements. Husband argues, therefore, that the court’s Marital Property Judgment “cannot stand.”

Wife argues that Husband waived his right to appeal the timeliness of the trial court’s decision by failing to raise the issue at the trial court level prior to the issuance of the court’s Marital Property Judgment. Wife contends that, even if not waived, Husband’s argument is without merit because the court properly retained the authority to enter the Marital Property Judgment, notwithstanding any failure by the court to comply with FL § 8-203.²

As a preliminary matter, we disagree with Wife’s contention that Husband’s argument was unpreserved. In *Davis v. Davis*, 335 Md. 699 (1994), on which Wife relies, the Supreme Court of Maryland³ held that the petitioner had failed to preserve his claim regarding the trial court’s compliance with FL § 8-203 because he had not raised that claim in the trial court. *Id.* at 718-22. That case is distinguishable because, in that case, the claim

² Wife argues that the trial court’s delay was partially excused by the COVID-19 pandemic and subsequent court closures. Husband insists that those closures did not excuse the court’s delay. We need not address those contentions, as they are not necessary to our determination.

³ At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See, also*, Md. Rule 1-101.1(a) (“From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland....”).

was raised for the first time on appeal. *Id.* at 705-06; *see also Steinhoff v. Sommerfelt*, 144 Md. App. 463, 477-78 (2002) (same). Here, by contrast, Husband brought the matter to the trial court’s attention, albeit quite belatedly, by way of the Motion for Reconsideration he filed following entry of the court’s Marital Property Judgment. Given those circumstances, we are persuaded that the issue was preserved. We now turn to the merits of Husband’s argument.

FL § 8-203(a) states, in pertinent part, that:

(a) In a proceeding for an annulment or an absolute divorce, if there is a dispute as to whether certain property is marital property, the court shall determine which property is marital property:

- (1) when the court grants an annulment or an absolute divorce;
- (2) within 90 days after the court grants an annulment or divorce, if the court expressly reserves in the annulment or divorce decree the power to make the determination; or
- (3) after the 90-day period if:
 - (i) the court expressly reserves in the annulment or divorce decree the power to make the determination;
 - (ii) during the 90-day period, the court extends the time for making the determination; and
 - (iii) the parties consent to the extension.

Here, the trial court did not make its determination regarding marital property when it granted the divorce on November 9, 2020, nor did it do so within 90 days of that date. Thus, to comply with FL § 8-203, the court needed to: expressly reserve the power to make that determination in the Divorce Judgment; extend the time for making the determination within 90 days of issuing the Divorce Judgment; and obtain the parties’ consent. Although

the court arguably complied with the first prong when it stated in the Divorce Judgment that it would “issue a further order as to a monetary award[,]” the court did not subsequently extend the time for making its marital property determination, nor did the court obtain the parties’ consent to the extension. Therefore, the court failed to comply with FL § 8-203.

That conclusion does not end our inquiry, as we must now determine the appropriate sanction. Husband argues that the trial court’s failure to comply with FL § 8-203 means that the Marital Property Judgment, and in particular the court’s determination of marital property, “cannot stand.” We disagree.

In *Brodak v. Brodak*, 294 Md. 10 (1982), the Supreme Court of Maryland held that the 90-day time limit was not jurisdictional and that, consequently, the trial court was not deprived of its power to issue a marital property determination when it failed to act within that time limit. *Id.* at 13-25. The Court also held that voiding the trial court’s determination of marital property would be an inappropriate sanction because it was the court, and not either of the parties, that was responsible for the delay. *Id.* at 24-25.

This Court reached a similar conclusion in *Zorich v. Zorich*, 63 Md. App. 710 (1985). There, the trial court made a tentative, oral ruling regarding marital property within the 90-day period, after which the court asked one of the parties to prepare a written order for the court’s signature. *Id.* at 712-13. The party failed to submit the order in a timely manner, and the court was unable to sign the order within the 90-day deadline. *Id.* On appeal, the opposing party argued that the court’s order was a nullity, and we disagreed. *Id.* at 714-16. We explained:

[I]t is neither the lapse of time, nor the mandatory nature of [the statute] which is controlling; rather, it is the responsibility for the delay. The responsibility for making the determination required by the statute and for filing the decree embodying that determination rests with the trial judge. That responsibility is not, and cannot be, shifted to a party by a direction from the judge that that party draft or prepare the decree. We will not, under these facts shift, the burden of the court’s failure to act to the prevailing party.

Id. at 715-16 (footnote omitted).

We applied a similar “fault test” in *Williams v. Williams*, 71 Md. App. 22 (1987). There, we held that the trial court retained the power to make a marital award despite its failure to issue the award within the 90-day period. *Id.* at 27-34. In so doing, we explained that “all of the evidence necessary for the court to designate marital property had been provided to the court within the 90[-]day period” and that “[i]t was only the court’s order that was entered after the 90th day.” *Id.* at 33. We explained that, ordinarily, the trial court is at fault when the court has “been provided with all of the evidence necessary timely to determine marital property,” and the court “delays in doing so until after the statutory period has passed[.]” *Id.* We held that, because the parties in that case “had no further role to play in the designation of marital property or in the decision pertaining to its disposition,” the court was at fault for the delay. *Id.* at 34; *see also Steinhoff*, 144 Md. App. at 482 (holding that the trial court was not divested of jurisdiction for failing to comply with FL § 8-203, where the parties “had presented all the evidence they had to offer”).

Turning back to the instant case, we hold that the trial court was “at fault” for the delay in issuing its Marital Property Judgment. As the court conceded in that judgment, all of the information necessary for the court to designate marital property had been provided by the parties during the three-day merits hearing in February 2020. At that point,

the parties had “no further role to play” in the court’s decision, and any further delay was the fault of the court. As such, the court’s belated judgment is not “void,” as the court retained the authority to issue its marital property determination beyond the 90-day deadline set forth in FL § 8-203. Were we to reverse the court’s decision, as Husband insists, we would be improperly sanctioning Wife for the court’s failure to act.

Husband attempts to distinguish the aforementioned case law by claiming that, in those cases, the trial courts had “properly reserved on the issue of determining marital property in [their] divorce decrees.” Husband suggests that the holdings of those cases do not apply in cases where, as here, a trial court does not make such a reservation.

Husband is wrong. First, none of the above cases state, or even suggest, that for the “fault test” to apply, a trial court is required to reserve on the issue of determining marital property in its divorce decree. Regardless, the record in the instant case makes plain that the trial court did make such a reservation. In the Divorce Judgment, the court stated that, while it had reached a decision on most issues during the June 2020 hearing, it had reserved on the issues of marital property and a marital award. The court then set forth in the judgment the various rulings it had made at the June 2020 hearing. The court concluded the judgment by stating that it would be issuing a “further order as to a monetary award[.]” No reasonable interpretation of that judgment could result in a conclusion other than that the court was reserving on the issue of marital property. That the court used the term “monetary award” and not “marital property” is immaterial, as the statute does not require the court to use any particular language.

Finally, Husband argues that Wife had an affirmative obligation to bring the matter to the trial court’s attention within the 90-day period.⁴ Again, we disagree. We do not read any of the relevant case law as requiring such an affirmative act. To the contrary, the case law makes clear that, once the court has all the requisite information and the parties have no further role to play, the burden is on the court to make a timely decision. That burden cannot, and should not, be shifted to the parties. Wife did everything in her power to see that the court made a timely decision, but, despite those efforts, the court failed to do so. Wife should not be punished for the court’s failure.

II.

Husband next argues that the trial court abused its discretion in including a monetary award in the Marital Property Judgment. Husband notes that, before a court can make a monetary award, the court must first determine which property is marital. And, Husband argues, for a court to be able to make that determination after entering its divorce decree, the court must expressly reserve that right in the divorce judgment, which the trial court did not do in the instant case. Husband argues that, without such a reservation, “the court’s monetary award must be deemed void[.]”

We hold that the trial court did not abuse its discretion in issuing its monetary award. Although we do not agree with Husband’s interpretation of the relevant law, we need not address that issue because, as discussed in Part I, the court did expressly reserve in the

⁴ Wife has included, in a separate appendix, copies of several emails that purportedly show that Wife’s counsel had tried contacting the trial court to encourage a decision. Husband has moved to strike those emails from the record. We did not consider those emails, as they were not necessary to the resolution of the case.

Divorce Judgment its right to make its marital property determination at a future date. Husband’s argument is therefore without merit and not supported by the record.

III.

Husband’s final claim is that the trial court abused its discretion in ordering him to pay Wife’s attorneys’ fees as part of the Marital Property Judgment. Husband argues that, under FL § 7-107, an award of attorneys’ fees can only be made during “a proceeding under this title[.]” (Emphasis omitted.) Husband contends that, in his case, the “proceeding” ended upon entry of the Divorce Judgment. Husband argues, therefore, that the court did not have the authority to award attorneys’ fees in the Marital Property Judgment because that judgment was entered approximately 18 months after the proceeding ended.

We hold that the trial court did not abuse its discretion. To be sure, FL § 7-107 authorizes a court to award attorneys’ fees “[a]t any point” in a divorce action. FL § 7-107(b). Whether that authority ended upon entry of the divorce judgment is inconsequential, however, because FL § 7-107 was not the court’s sole authority for the award of attorneys’ fees. Another such authority can be found in FL § 8-214, which permits a court to award attorneys’ fees at any point in a proceeding in which the court is asked to identify, value, and distribute marital property. FL § 8-214(b). That proceeding was still pending when the court made its award of attorneys’ fees. Thus, Husband’s contention that the court somehow lacked the authority to award attorneys’ fees in the Marital Property Judgment is without merit.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.