

Circuit Court for Washington County
Case No. 21-C-16-056671

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 6

September Term, 2017

ROBERT ALLEMAN

v.

SITHOKOZILE ALLEMAN

Woodward, C.J.,
Kehoe,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 11, 2018

*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.

On December 1, 2016, the Circuit Court for Washington County granted Sithokozile Alleman’s, appellee, request for a limited divorce from Robert Alleman, appellant, on the basis of separation, pursuant to Maryland Code (1984, 2012 Repl. Vol., 2017 Suppl.), Family Law Article (“F.L.”), § 7-102(a)(4). Mr. Alleman opposed the divorce and subsequently filed a motion to vacate, contending that the court could not order a limited divorce based on separation due to his compliance with a protective order. The circuit court denied the motion following a hearing. Mr. Alleman timely noted an appeal to this Court, from which we discern two issues: 1) whether the court erred in ordering a limited divorce; and 2) whether the court violated Mr. Alleman’s due process rights. For the reasons stated below, we affirm.

The parties were married on September 26, 1992, in Pennsylvania. Since 2001, the parties had resided in Maryland, and four children were born as a result of the union.¹ At the time of the limited divorce proceeding, the marital home was located in Hagerstown.

On August 24, 2015, Mrs. Alleman left the marital home. She testified that she took the children with her and had no intention of resuming the marital relationship. A few days later, Mrs. Alleman obtained a protective order against Mr. Alleman. Sometime in early November, Mrs. Alleman returned to the marital home, and Mr. Alleman was not present, in compliance with the protective order.

¹ At the time of the limited divorce hearing, two of the children were emancipated by age and/or status, and the parties expected a third child to be emancipated the following spring when he graduated from high school.

On March 29, 2016, Mrs. Alleman filed a complaint for limited divorce on the ground of separation. On September 20, 2016, the circuit court entered a *pendente lite* order granting Mrs. Alleman sole legal and primary physical custody of the minor children, as well as use and possession of the marital home. In August 2016, prior to the expiration of the protective order, Mrs. Alleman requested an extension of the protective order, which was later denied.

On November 23, 2016, the parties appeared in the circuit court for a hearing as to Mrs. Alleman’s complaint for limited divorce. Mr. Alleman argued that he lived separate and apart from Mrs. Alleman only due to his compliance with the protective order. The circuit court, however, credited Mrs. Alleman’s testimony that she had no intention of resuming the marital relationship when she left the marital home. Accordingly, the court granted her request for a limited divorce, as well as use and possession of the marital home.

On appeal, Mr. Alleman urges this Court to vacate the order of limited divorce pursuant to F.L. § 7-103.1(b), which provided that in a divorce proceeding, “a court may not consider compliance with an order issued under Title 4, Subtitle 5 [a protective order] of this article as grounds for granting a decree of limited or absolute divorce.”²

Our review of this case is governed by Rule 8-131(c), which provides that in cases tried without a jury, “the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the

² We note that the General Assembly has since repealed this statute, effective October 1, 2017.

credibility of the witnesses.” The Court of Appeals has remarked that, “[i]f there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.” *Della Ratta v. Dyas*, 414 Md. 556, 565 (2010) (quoting *Solomon v. Solomon*, 383 Md. 176, 202 (2004)). Additionally, appellate courts will defer to the circuit court’s assessment of witnesses’ credibility. See *Kelly v. Montgomery Cnty. Office of Child Support Enforcement*, 227 Md. App. 106, 116 (2016).

Mr. Alleman is correct that at the time that the court granted the limited divorce in this case, F.L. § 7-103.1(b) provided that a court could not consider compliance with a protective order as grounds for granting a divorce. The circuit court, however, did not consider his compliance with the protective order in its order of limited divorce. Section 7-102(a)(4) of the Family Law Article provides that a court may grant a request for limited divorce on the ground of “separation, if the parties are living separate and apart without cohabitation.” At the conclusion of the hearing, the court determined that the parties separated on August 24, 2015, and that they had lived separate and apart since that time. The court added: “And Ms. Alleman testified under oath that when she left, she had no intentions of returning to the marriage.” The court, therefore, did not grant the limited divorce based on Mr. Alleman’s compliance with the protective order, nor did the court consider it in its ruling.

Next, Mr. Alleman contends that the court violated his due process rights by scheduling the hearing for a limited divorce on the morning of November 23, 2016, and a hearing on Mrs. Alleman’s request to extend the protective order in the afternoon of the same day. Mr. Alleman, however, presents no legal theory or argument in his brief as to

how this is a violation of his due process rights. Accordingly, we will not review it. *See Judd Fire Prot., Inc. v. Davidson*, 138 Md. App. 654, 670 (2001) (noting that “it ‘is not our function to seek out the law in support of a party’s appellate contentions’” (quoting *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997))).

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