UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0497

September Term, 2013

BISMARK KWAKU TORKORNOO

v.

MARY TORKORNOO ET AL.

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: June 26, 2015

*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.

In 2008, Appellant Bismark Kwaku Torkornoo ("Bismark") and Appellee Mary Torkornoo ("Mary") were divorced.[1] Several years later, in 2012, Mary filed a petition to sell Bismark and Mary's former marital home in lieu of partition, which the Circuit Court for Montgomery County granted. The court also appointed Appellee John C. Monahan, Esq. ("Trustee") as trustee to effectuate the sale. Although Bismark ultimately agreed to the sale, he disputed the value of the marital home as established by Trustee's first appraisal. Consequently, Bismark filed a motion requesting a second appraisal and appointment of another trustee, which the court denied without holding a hearing. Thereafter, Trustee executed a contract offer made by Mary to purchase the marital home and filed a report of sale and motion for ratification. The circuit court entered an order ratifying the sale, and this timely appeal followed.[2] Bismark, proceeding *pro se*, presents three questions for our review, which we have rephrased slightly and re-ordered:

I. Was the circuit court's grant of Trustee's motion for ratification of the sale of the former marital home legally correct pursuant to Maryland Rule 2-353(b)?

II. Was the circuit court's denial of Bismark's motion to request a second appraisal and to appoint another trustee and his request for a hearing legally correct when Maryland Rule 2-311(f) requires the court to hold a hearing before rendering a decision disposing of a claim or a defense?

[1] For the sake of clarity and meaning no disrespect, we will also refer to the former spouses involved in this case by their first names when discussing the facts. *See Karsenty v. Schoukroun*, 406 Md. 469, 478 n.2 (2008).

[2] Mary did not file a brief in this appeal, but on March 24, 2014, this Court granted Mary's motion to rely on Trustee's brief.

III. Was the circuit court's denial of Bismark's motion to disqualify/recuse Hon. Cynthia Callahan legally correct when Maryland Rule 16-813, CJCR 2.11 provides for recusal when personal interest or conflict of interest becomes an issue in judicial matter or may compromise justice?

For the reasons set forth herein, we affirm the judgments of the circuit court.

BACKGROUND

During their marriage, Bismark and Mary jointly owned the real property located at 4 Applegrath Court in Germantown, Maryland 20876. Two children were born during their marriage.[3] In 2008, Bismark and Mary sought a divorce, and the Circuit Court for Montgomery County entered a judgment of absolute divorce on August 13, 2009, and an amended judgment on August 18, 2009. As relevant to the instant appeal, the amended judgment provided:

> ORDERED, that [Mary] shall have exclusive use and possession of the family home . . . for a period of three years from the date of this Order; and it is further
>
> ORDERED, on the conditions that not later than 90 days from the date of this Order [Mary] obtains approval to remove [Bismark]'s name from the lien on [the marital home] and clears the arrearage on the mortgage, the Court orders [the marital home] transferred to [Mary] as her sole and separate property. In the event this transfer occurs, [Bismark] shall be entitled to a credit against the child support arrears in the amount of $4,578; and it is further
>
> ORDERED, that in the event [Mary] [cannot] meet the conditions set forth in the immediately preceding paragraph, at the end of the three year period of exclusive use and possession, the [marital] home shall be sold and the proceeds divided equally between the parties[.]

[3] The custody of these children and corresponding visitation/communication rights have been points of ongoing contention between Bismark and Mary in the case below.

Mary did not satisfy the conditions set forth in the order. Accordingly, three years later, she filed a petition for sale of the marital property in lieu of partition on February 6, 2012 and a motion to appoint a trustee to effectuate the sale of the marital home on July 20, 2012. After holding a hearing on September 7, 2012, the circuit court entered an order granting Mary's petition for sale in lieu of partition and appointing Trustee to sell the marital home.

Thereafter, Trustee took the steps necessary to effectuate the sale. He first obtained an appraisal of the marital property, dated December 12, 2012, which was conducted by certified residential appraiser John P. O'Neill. The appraiser opined that the market value of the property was $207,000.00. In a letter dated January 15, 2013, Trustee notified both Bismark and Mary of the appraisal and advised that he would sell the property to either of them at the appraised price.

In response, Bismark filed a motion to request a second appraisal and to appoint another trustee regarding sale in lieu of partition of the parties' marital home on January 23, 2013, disputing the appraiser's value. He argued that the appraised value of $207,000.00 "was not consistent with the most recent Comparative Market Analysis" because the appraiser "used only three (3) comparable sales instead of more than six (6) available comparable sales of such real property." He also urged that Trustee "compromised the appraisal process with Defendant." Several days later, on January 28, 2013, Bismark filed a motion to request a hearing on the January 23, 2013, motion. In an order entered on April 22, 2013, the court denied both motions without holding a hearing.

On May 10, 2013, Bismark filed a motion to recuse Judge Cynthia Callahan—the judge who presided over the divorce/custody case as well as the marital property issues—asserting that she had a "conflict of interest" and violated his Fourteenth Amendment Right to Equal Protection and "Rule of Law" by denying all of his prior motions and reversing other decisions made in his favor.[4]

On May 13, 2013, Trustee filed a "Report of Sale, Trustee's Affidavit, and Motion for Ratification." In this motion, Trustee asserted that Mary contacted him to purchase the marital home, and that on or about February 13, 2013, he prepared a contract for sale and received a deposit from Mary. He further explained that due to Bismark's motion to appoint another trustee, Trustee did not take any action on the contract until the court ruled on that motion. Once the court did so, Trustee accepted Mary's offer on April 24, 2013, and executed the contract for purchase in the appraised value of $207,000.00. The contract of sale was attached to the motion. After deducting the *anticipated* costs of Trustee's commission ($8,280.00), the appraisal fee ($450.00), 50% of the closing and recordation taxes and fees ($2,070.00), and the balance of the existing mortgage ($189,000.00), Trustee's Report of Sale reflected that the net proceeds would be approximately $7,200.00, meaning that each party would receive $3,600.00. Appended to the last page of the motion

[4] Bismark also filed a motion to recuse the Master involved in his case, which was denied.

was an Affidavit of Trustee.[5] According to Trustee, Bismark never expressed any interest in purchasing the property.

On June 18, 2013, the court entered two orders: one ratifying the contract of sale, and another denying the motion for recusal. Bismark filed a timely appeal[6] and a "Motion to Stay Judgment Order" on June 24, 2013. The court denied the motion to stay. Additional facts will be discussed as necessary to our resolution of the issues.

DISCUSSION

I.

Bismark contends that the circuit court erred in granting Trustee's motion to ratify the sale of the marital property. "In reviewing a trial court's finding of fact, we do 'not substitute our judgment for that of the lower court unless it was clearly erroneous' and give due consideration to the trial court's 'opportunity to observe the demeanor of the witnesses, to judge their credibility and to pass upon the weight to be given their testimony.'" *Jones v. Rosenberg*, 178 Md. App. 54, 68 (2008) (quoting *Young v. Young*, 37 Md. App. 211, 220 (1977)). "Questions of law decided by the trial court are subject to a *de novo* standard of review." *Id.* (citing *Liddy v. Lamone*, 398 Md. 233, 246-47 (2007)).

[5] The Affidavit stated, in pertinent part, "your Trustee believes this is a very fair sales price for the property for the benefit of all parties involved, and further, the undersigned Trustee verifies the truth of all factual matters contained in this Trustee's Report to the Court on the Contract for the sale of the real property involved herein."

[6] On July 30, 2013, Bismark filed a motion to consolidate this appeal with an appeal noted on December 20, 2012. This Court denied that motion on October 22, 2013. On September 19, 2013, Bismark filed another motion to consolidate this appeal with an appeal noted on September 16, 2013. This Court denied that motion on October 29, 2013.

From what we can ascertain from his briefing, Bismark lodges three main arguments relating to the court's ratification of the sale. First, Bismark argues that the balance of the mortgage represented in Trustee's Report of Sale was incorrect and that the motion to ratify violated Maryland Rule 2-311(d) by failing to attach an exhibit documenting the balance.[7]

Chapter 300 of Title 14 of the Maryland Rules governs judicial sales and establishes the methods for challenging any irregularities or mistakes in the sale process. The Rules provide that before making the private sale, the person conducting the sale must file "an appraisal made by a competent appraiser within six months before the date of sale." Rule 14-303(c). He or she is also required, "[a]s soon as practicable, but not more than 30 days after the sale," to file "a complete report of the sale and an affidavit of the fairness of the sale and the truth of the report." Rule 14-305(a). Within 30 days after the report of sale is filed (if no public notice is published in a newspaper), a party is permitted to file exceptions to the sale in writing by specifying with particularity any irregularity in the sale. Rule 14-305(d)(1). "Any matter not specifically set forth in the exceptions is waived unless the court finds that justice requires otherwise." *Id.* A court must "ratify the sale if (1) the time for filing exceptions . . . has expired and exceptions to the report either were not filed or were filed but not overruled, and (2) the court is satisfied that the sale was fairly and properly made." Rule 14-305(e). "If the court is not satisfied that the sale was fairly and properly made, it may enter any order that it deems appropriate." *Id.*

[7] Rule 2-311(d) provides that "[a] motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based."

In the instant case, Trustee filed the report of sale, trustee's affidavit, and motion for ratification attaching the appraisal on May 13, 2013 pursuant to Rules 14-303(c) and 14-305(a). The record does not reflect that Bismark filed exceptions to the report of sale.[8] On June 18, 2013, more than 30 days after the filing of the report of sale, the circuit court entered an order ratifying the sale and, in its order, recognized that Bismark did not file any exceptions and that it appeared to the court that "the sale was fairly and properly made" pursuant to Rule 14-305(e). Absent any written objection in the circuit court, we conclude that Bismark has waived his arguments pursuant to Rule 14-305(d)(1) regarding the accuracy of the mortgage balance and sufficiency of Trustee's affidavit under Rule 2-311(d).[9]

Second, Bismark contends that the circuit court failed to provide a fair hearing on the ratification; however, the circuit court was not required to hold a hearing in this case.

[8] We further note that the record also does not contain anything akin to written exceptions, like an opposition to the motion for ratification or the report of sale. Bismark did attempt to argue the issue at the June 7, 2013, hearing held on a motion for contribution, but the court did not allow it. Moreover, in his brief, Bismark states that he did not file a response because he had already appealed the appraisal itself. However, Bismark was required to file written exceptions, and "[i]t is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel." *Dep't of Labor, Licensing & Regulation v. Woodie*, 128 Md. App. 398, 411 (1999); *see also Pickett v. Noba, Inc.*, 122 Md. App. 566, 568 (1998) ("While we recognize and sympathize with those whose economic means require self-representation, we also need to adhere to procedural rules in order to maintain consistency in the judicial system.").

[9] Trustee avers that the payoff amount of the mortgage at the time of closing was $185,858.79 instead of the $189,000.00 reflected in the estimated amounts of the Report of Sale. The record does not contain the final accounting filed by Trustee after this appeal was noted, but it would seem that the parties' net proceeds from the sale ultimately increased.

In the context of judicial ratification of a sale, Rule 13-305(d)(2) provides that when exceptions are filed, "[t]he court shall determine whether to hold a hearing on the exceptions but it may not set aside a sale without a hearing." The court must "hold a hearing if a hearing is requested and the exceptions or any response clearly show a need to take evidence." *Id.* Because Bismark did not file any exceptions and therefore could not have requested a hearing on those exceptions, the circuit court did not err in not holding a hearing.[10]

Third, Bismark contends that pursuant to Maryland Rule 2-535(b), he is permitted to file a motion at any time to correct the court's ruling. Rule 2-535(b) provides that "[o]n 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." The record does not reflect that Bismark filed a motion alleging fraud, mistake, or irregularity pursuant to this Rule. It is the circuit court that retains revisory power over the circuit court's judgment under Rule 2-535(b). This issue was not presented to the circuit court.

In sum, we conclude that the circuit court did not err in granting Trustee's motion for ratification of the sale of the parties' marital property.

[10] At the June 7, 2013, hearing, the court ruled on Mary's motion for contribution and ordered Bismark to pay Mary $235.00. The court noted that it had signed the ratification of the sale, but did not solicit argument on the motion.

II.

Bismark argues that the circuit court erred in denying his motion for a second appraisal and to appoint another trustee without holding a hearing. Maryland Rule 2-311(f) provides:

> A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing." The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

As a threshold matter, we note that Bismark did not include the language "Request for Hearing" in the title of his motion, thereby failing to adhere to the above-quoted rule. He did, however, file a separate motion requesting a hearing five days later.

The extent to which this separate motion sufficiently requested a hearing is of no matter, however, because the circuit court's ruling on Bismark's motion for a second appraisal and to appoint another trustee was not dispositive of a claim or defense. In *Fowler v. Printers II, Inc.*, we reviewed the history of Rule 2-311(f) and concluded that

> the requirement that a hearing be held if the ruling is dispositive of a "claim" or "defense" was intended to be a "claim" or "defense" intrinsic to the underlying cause of action, *i.e.*, those dispositive "of the case," like motions for summary judgment and motions to dismiss, and not collateral claims or defenses like those involving sanctions or discovery matters.

89 Md. App. 448, 485 (1991); *see also Wilson v. N.B.S., Inc.*, 130 Md. App. 430, 452 (2000) ("[A] decision is 'dispositive' when it conclusively settles a matter and 'actually and formally dispose[s] of the claim or defense.'" (internal citations omitted)). When a

hearing is not required by an applicable rule, or when a ruling on the motion at issue is not dispositive of a claim or defense, it is within the court's discretion to hold a hearing. *Fowler*, 89 Md. App. at 484-85. Here, we concluded that Bismark's motion was not dispositive of any claim or defense in the case; instead, the motion sought an additional appraisal beyond that required by the Maryland Rules and by a different trustee than the one appointed by the court. Because the court was not required to hold a hearing, we are not persuaded that the court abused its discretion in not doing so.

We are also not persuaded that the court erred in denying the motion in any event. In his motion, Bismark argued that the appraised value "was not consistent with the most recent Comparative Market Analysis" because the appraiser "used only three (3) comparable sales instead of more than six (6) available comparable sales of such real property." He also urged that Trustee "compromised the appraisal process with Defendant."[11]

Trustee's appraisal was conducted by a certified appraiser whose license, effective at the time of the appraisal, is in the record. In addition to analyzing the home site and neighborhood, the appraiser engaged in a sale comparison approach with three relatively recently sold properties in the area. Based on this analysis, the appraiser opined that the market value of the marital home was $207,000.00. By contrast, the documentation

[11] In his brief, Bismark argues that the appraisal was erroneous because it did not reflect Bismark's payment for a new air conditioning system. Unfortunately, although Bismark raised this argument in the context of another motion before the circuit court, he did not raise it in his motion for a second appraisal and a new trustee, which is the motion presently before this Court. As a result, we decline to review it. *See* Maryland Rule 8-131(a).

submitted by Bismark to challenge this appraisal was a "pricing recommendation," dated August 21, 2012, provided by Metropolitan Regional Information Systems, Inc. At the bottom of each page, there was a "competitive market analysis disclosure," stating that "[t]his analysis is not an appraisal" and that "[i]t is intended only for the purpose of assisting buyers or sellers or prospective buyers or sellers in checking the listings, offering or sale price of the real property." The difference between the two documents is that the pricing recommendation provides a *suggested list price* for what a seller hopes to obtain for the property, whereas the appraisal provides a *market value* of the property. Only an appraisal is relevant in a judicial sale. Bismark certainly could have hired another certified appraiser to opine on the value of the home, but the Maryland Rules do not provide for a second appraisal. Moreover, there is nothing in the record reflecting that Trustee acted in a fraudulent manner. Therefore, the court did not err in denying the motion.

III.

Last, Bismark argues that the circuit court erred in denying his motion for recusal.[12] This Court recently summarized the Rules governing judicial conduct in *Karanikas v. Cartwright:*

[12] Generally, a disposition of a motion to recuse is not an appealable interlocutory order, and a party must wait until entry of a final judgment to challenge a recusal ruling. *See Doering v. Fader*, 316 Md. 351, 360 (1989); *Breuer v. Flynn*, 64 Md. App. 409, 415 (1985). Bismark's motion to recuse relates to many aspects of the overall family law case, not simply those issues relating to the sale. However, this Court denied both of Bismark's motions to consolidate the instant appeal with his other appeals, and it appears that this issue was not briefed in those appeals. *See supra* footnote 6. Because an order ratifying a sale may be considered a final appealable order, we will, out of fairness, review the denial (continued…)

> A Maryland judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned ..." Md. Rule 16–813, Md. Code of Judicial Conduct Rule 2.11(a) (the "Rules"). Similarly, "[a] judge shall avoid conduct that would create in reasonable minds a perception of impropriety." Rule 1.2(b). Impartiality under the Rules means the "absence of bias or prejudice in favor of, or against, particular classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge." Rules, Section B.
>
> Further, a judge "shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary." Rule 1.2(a). The Rules also require that judges "uphold and apply the law and shall perform all duties of the office impartially and fairly." Rule 2.2. Accordingly, "[a] judge shall not, in the performance of judicial duties, by words or conduct, manifest bias, prejudice or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation." Rule 2.3. "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, court staff, court officials, and others with whom the judge deals in an official capacity ..." Rule 2.8.

209 Md. App. 571, 579, *cert. granted,* 432 Md. 211 (2013) & *cert. dismissed as improvidently granted,* 436 Md. 73 (2013), *reconsideration denied* (Jan. 23, 2014).

"We review the trial judge's decision on a motion to recuse for abuse of discretion." *Scott v. State*, 175 Md. App. 130, 150 (2007) (citing *Cicoria v. State,* 89 Md. App. 403, 427 (1991), *aff'd,* 332 Md. 21 (1993)); *accord Surratt v. Prince George's Cnty.*, 320 Md. 439, 465 (1990) ("When bias, prejudice or lack of impartiality is alleged, the decision is a

(…continued)

of Bismark's motion to recuse at this juncture. *See Morgan v. Morgan*, 68 Md. App. 85, 95-97 (1986) (holding that an order issued in a sale in lieu of partition following a divorce was a "final" order for purposes of collateral estoppel).

discretionary one, unless the basis asserted is grounds for mandatory recusal."). As we explained in *Chapman v. State*,

> A party attempting to demonstrate "that a judge is not impartial or disinterested has a high burden to meet." *Scott [v. State]*, 110 Md. App. [464,] 486, 677 A.2d 1078 [1996]. "This is so because there is a strong presumption in Maryland, and elsewhere, that judges are impartial participants in the legal process, whose duty to preside when qualified is as strong as their duty to refrain from presiding when not qualified." *Jefferson–El [v. State]*, 330 Md. [99,] 107, 622 A.2d 737 [1993] (citations omitted).
>
> > To overcome the presumption of impartiality, the party requesting recusal must prove that the trial judge has "a personal bias or prejudice" concerning him or "personal knowledge of disputed evidentiary facts concerning the proceedings." *Boyd [v. State*, 321 Md. 69, 80, 581 A.2d 1 (1990)]. Only bias, prejudice, or knowledge derived from an extrajudicial source is "personal." Where knowledge is acquired in a judicial setting, or an opinion arguably expressing bias is formed on the basis of information "acquired from evidence presented in the course of judicial proceedings before him," neither that knowledge nor that opinion qualifies as "personal." *Boyd*, 321 Md. at 77, 581 A.2d 1 (quoting *Craven v. U.S.*, 22 F.2d 605, 607–08 (1st Cir.1927); [*Doering v. Fader*, 316 Md. 351, 356, 558 A.2d 733 (1989)].
>
> *Id.* at 107, 622 A.2d 737 (some citations omitted).
>
> A party attempting to demonstrate that a judge does not have the appearance of disinterestedness or impartiality carries a "slightly lesser burden." *Scott*, 110 Md. App. at 487, 677 A.2d 1078. "Appearance of disinterestedness or impartiality is determined by 'examining the record facts and the law, and then deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge.' " *Id.* at 487, 677 A.2d 1078 (quoting *Jefferson–El*, 330 Md. at 108, 622 A.2d 737 (citing *Boyd v. State*, 321 Md. 69, 86, 581 A.2d 1 (1990)).

115 Md. App. 626, 631-32 (1997).

Here, Bismark contends that Judge Callahan's denials of various motions are "erroneous because of her personal bias towards Bismark[,]" and his "question presented"

asserts that she had a conflict of interest. But Bismark fails to satisfy the high burden of showing that Judge Callahan had a personal bias in the case; there is no evidence whatsoever that she had knowledge of circumstances from an extrajudicial source. Moreover, from our careful examination of the record, it does not appear that Judge Callahan failed to maintain an appearance of impartiality from the standpoint of a reasonable person. The thrust of Bismark's argument is that Judge Callahan made erroneous rulings and consistently ruled against him. But we have long recognized "[t]he presumption that trial judges know the law and apply it properly." *State v. Chaney*, 375 Md. 168, 181 (2003). Moreover, "[t]he fact that a court rules in favor of one party over the other does not automatically mean that the judge is biased or prejudiced against the losing party." *Hill v. Hill*, 79 Md. App. 708, 716 & n.4 (1989) (citing *Tidler v. Tidler*, 50 Md. App. 1, 12 (1981) (rejecting Bismark's argument that the judge was biased because the court predominantly ruled against him). Although the transcripts from the proceedings included in the record reflect that there was friction, at times, between the court and Bismark, who mostly proceeded *pro se*, most of these instances reflected the court's need to regulate the proceedings, and we are satisfied that the court otherwise ensured that Bismark had the opportunity to address the court and present evidence. We find no abuse of discretion in the court's denial of the motion to recuse.

JUDGMENTS AFFIRMED; COSTS ASSESSED TO APPELLANT.