

Circuit Court for Montgomery County
Case No. 154192FL

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0913

September Term, 2021

LLOYD MALECH

v.

RORI MALECH

Kehoe,
Nazarian,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: June 21, 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.

Lawyers often joke that we went to law school because we aren't good at or don't like math. But sometimes math and law intersect, and when they do the results can be messy. Lloyd Malech ("Husband") and Rori Malech ("Wife"), both lawyers represented by lawyers, executed a divorce settlement with the intent to equalize their retirement assets. The divorce judgment that followed provided, in so many words, that "[t]he parties shall equalize their retirement assets as of 12/31/2019 with a rollover transfer of \$303,388 from [Wife's] retirement assets to [Husband's] retirement assets plus or minus any proportionate gains or losses on the transfer amount from 12/31/2019 until the date of transfer." But something didn't add up.¹ The Circuit Court for Montgomery County, ruling on competing motions to enforce the judgment, agreed with Wife that the transfer amount was based on a "clerical error." The trial court found that the testimony and supporting documents, referenced by the judgment itself and Husband in his own motion to enforce, reflected that the correct transfer amount was \$263,388. The court entered orders to effectuate the transfer with certain *pro rata* portions of the transfer amount drawn from each of Wife's retirement accounts (with their proportionate gains and losses). Husband appeals, arguing the trial court acted without authority in changing the transfer amount. We affirm, holding that because the court expressly reserved jurisdiction to "effectuate the intent of the parties' agreement" and because Husband raised the issue over the transfer amount, the court had the authority to correct it.

¹ Lawyers, although bad at math, arguably are better at puns.

I. BACKGROUND

We should start by giving credit where credit is due: Husband and Wife resolved the merits of their property distribution and all other issues, and they memorialized the agreement in a Judgment of Absolute Divorce (“JAD”) that the circuit court entered in 2020. The dispute before us arises only in the implementation of the provision of the JAD that provided for the division of the parties’ retirement assets:

Retirement (#11-14 on the Joint 9-207): *The parties shall equalize their retirement assets as of 12/31/2019 with a rollover transfer of \$303,388 from [Wife’s] retirement assets to [Husband’s] retirement assets plus or minus any proportionate gains or losses on the transfer amount from 12/31/2019 until the date of the transfer. Within 120 days of January 13, 2020, the parties shall submit all necessary paperwork. [Wife’s] counsel shall prepare any appropriate order(s) to implement the retirement transfer and present them to [Husband’s] counsel for review prior to submission to the court. This Court reserves jurisdiction for the receipt, entry or amendment of any appropriate Orders pertaining to retirement to effectuate the intent of the parties’ agreement*

(Emphasis added.) Each party has two retirement accounts of varying amounts; one of Wife’s accounts has a lien for a loan she took out against it during the marriage. The Joint 9-207 Statement referenced in the JAD reflects that the parties agreed that both parties’ accounts, along with the debt, were “marital property.”

At some point after the JAD was entered by the court, Wife’s counsel prepared and sent a qualified domestic relations order (“QDRO”) to Husband to effectuate the transfer for the \$303,388. Husband rejected the draft, though, “because of inconsistencies with the QDRO’s language compared to the intent described in the JAD.” On December 28, 2020, Wife filed a motion with the circuit court to enforce the JAD. In her motion, Wife

referenced the \$303,388 transfer amount and included that amount in her proposed QDRO.

Husband's response and counter-motion to enforce the JAD disputed the amount of the transfer. His disagreement with Wife's initially drafted QDRO was that she sought to transfer the \$303,388 (with gains or losses) from one retirement account rather than *pro rata* from each of her two retirement accounts. He demanded access to Wife's bank statements and asked the trial court to determine the proportional gains and losses of the accounts to "equalize the parties' Retirement Accounts." Husband insisted that "[b]efore the Court can determine the dollar figure amount of retirement assets [Husband] will ultimately be receiving, the Court must determine what percentage of proportionate gains belong to the [Husband]. There is enough information in the Joint 9-207 Statement for the Court to make this determination."

Up until this point, everyone agreed the transfer amount was \$303,388, "plus or minus any proportionate gains or losses" But at the hearing for the parties' competing motions to enforce, on July 29, 2021, Wife asserted that in preparing for the hearing, she realized that the \$303,388 number was the result of a typographical error and that the transfer amount should have been \$263,388. Husband and Wife each testified as to how the JAD retirement transfer number was reached. Wife testified that the mistake was the result of hasty negotiations between attorneys. She confirmed that she had a loan balance of \$39,894.71 against one of her retirement accounts that she used to cover legal fees, but argued "the evidence is clear that a mathematical mistake was made in the judgment of

divorce. This was a last-minute settlement that they reached literally at the courthouse.”² Husband testified that the lien against Wife’s retirement account was considered when negotiating the JAD because Wife “removed it for her own personal use” Husband stated the loan assets were still part of the marital assets so the parties *added* the loan amount back to the corpus of the retirement,³ which brings us to the \$303,388 number. But his math is wrong,⁴ and there literally is no way using the correct numbers to get to the \$303,388 amount in the JAD.

² In her brief, Wife asserts for the first time that the “mathematical error occurred in the calculation, when two numbers were transposed . . . and then there was a typographical error.” Husband lends credibility to Wife’s typo theory when he states in his brief that “the parties intentionally wrote **\$303,288** as their intended Transfer Amount in the JAD” and later asks this Court to “re-establish the original, agreed-upon amount of **\$303,833**” (Emphasis added.) In fact, both parties’ briefs contain *several* numeric typos.

Wife also transposed the numbers in the lien amount from \$39,895 to \$39,985 both at the trial level and in her brief. The trial court used the transposed number to calculate the \$263,388 transfer amount in the QDROs. Using the correct lien amount, the actual transfer amount should have been \$263,433. Husband didn’t raise the error at the trial level or in his appeal, though. Instead, he attacked the trial court’s legal authority to change the transfer amount in the JAD after thirty days. And the record reveals that Husband made the same error during his testimony, where he stated that the lien amount was \$39,895 and then \$39,985. We therefore consider this issue waived. *See* Md. Rule 8-131(a).

³ The appropriate way to attribute the loan solely to Wife would be to ignore the lien amount when calculating the transfer amount, leaving the lien in place against Wife’s share after a transfer.

⁴ Husband argued in the circuit court that the \$303,388 number was negotiated and that the difference between the two parties’ retirement assets is \$566,781. The record demonstrates that the difference is \$566,761. He also stated twice that half of the lien (added back to his share) was \$19,654, but that half of the (correct) lien amount is \$19,948. But even if we use Husband’s faulty equation and numbers, the transfer amount still doesn’t equal \$303,388.

The trial court issued an oral ruling stating that “this was a mere clerical error and . . . the supporting documents show what the equalization number would be” and executed two QDROs, one for each retirement account, to effectuate transfers adding up to \$263,388. The court also ordered that a certain *pro rata* portion of the transfer amount would be drawn from each of Wife’s retirement accounts with proportionate gains and losses from each account.

Husband filed a timely appeal.

II. DISCUSSION

Appellate courts give “great deference to the findings and judgements of trial judges, sitting in their equitable capacity, when conducting divorce proceedings.” *Tracey v. Tracey*, 328 Md. 380, 385 (1992). “We will not overturn the judgment of the trial court on the evidence absent clearly erroneous fact finding and ‘will give due regard to the trial court’s opportunity to judge the credibility of the witnesses.’” *Mills v. Mills*, 178 Md. App. 728, 734 (2008) (*quoting* Md. Rule 8-131(c)).

Everyone agrees that the overarching goal of the operative language was to equalize the parties’ retirement assets, to ensure that each walked away from the divorce with an equal amount in their retirement accounts. The sole issue before us is whether the trial court had the authority to change (in this instance, to decrease) the transfer amount listed in the JAD, which was meant to accomplish that goal but didn’t.⁵ Husband attacks the trial court’s

⁵ Husband phrased his Questions Presented as follows:

1. Did the Circuit Court commit error by exercising revisory

authority in three ways: he argues *first*, that the trial court improperly modified the JAD transfer amount because the JAD was a final judgment only subject to the trial court's

powers over the JAD, when no motion had been filed for 30 days after entry of the JAD, and when the alleged “mistake” was a number that the parties had negotiated, stated on the record, and written into their own consented-to JAD, and subsequent filings, without any allegation or mention of any error in the 18 months before the hearing?

2. If the Lower Court treated the JAD as a contract, and analyzed it for potential reformation based upon the doctrine of mutual mistake, was that analysis erroneous under Maryland law, and, more importantly, was any finding of mutual mistake reversible error for lack of supporting evidence in the record?

3. Did the Circuit Court erroneously deprive Lloyd of due process or proceed without authority, when it reduced the Transfer Amount at the Hearing when neither party had ever prayed for such relief in writing, nor raised the issue in any way prior to the Hearing?

Wife phrased her Questions Presented as follows:

1. Given two conflicting expressions of the Transfer Amount, the Trial Court correctly entered a QDRO that effected the parties' shared intent of “equalizing” their retirement assets as of December 31, 2019, where the Court reserved jurisdiction “for the receipt, entry or amendment of any appropriate Orders pertaining to the retirement to effectuate the intent of the parties' agreement[.]”

2. The Trial Court properly exercised its jurisdiction to enter QDROs that equalized the parties' retirement assets to “effectuate the intent of the parties' agreement” to equalize their retirement assets.

3. The Trial Court did not deprive Lloyd of due process as both parties were prepared for and addressed the issue of the Transfer Amount. At no point did Lloyd object to addressing the issue of the Transfer Amount, and as such he waived the issue on appeal.

revisory power under Maryland Rule 2-535; *second*, that if the JAD is treated as a contract, there was insufficient evidence of mutual mistake; and *third*, that he was denied due process because the trial court ruled without the issue being properly raised.

Each party raises a preliminary issue. Husband contends that because no party filed an appeal from the JAD or moved to revise it, Wife is barred from seeking to have the number amended. We disagree. In the JAD itself, the court expressly reserved jurisdiction to “effectuate the intent of the parties’ agreement[.]” Husband himself disputed the transfer amount and asked the court to revisit it, and both the JAD and Husband in his motion referenced the Joint 9-207 Statement, which conflicted with the transfer amount. The court had the authority to correct the error, both parties asked it do so, and it did.

For her part, Wife claims that Husband failed to object to “the issue of the mathematical correction” at the hearing and failed to preserve the issue for appeal under Maryland Rule 8-131(a). But Husband stated at the hearing that “[w]ith respect to the argument that counsel made regarding trying to change the number from 303388, I don’t think that’s something that we do here. The order is the order. The number was negotiated.” Additionally, in its oral ruling the trial court stated that it “[d]id not find in this case that the issue of correcting that amount is beyond the authority of the Court, because I do believe that that’s all it was, was an error.” We may decide issues that either “have been raised in *or* decided by the trial court” Md. Rule 8-131(a) (emphasis added). Husband both challenged the court’s authority to modify the order *and* the trial court ruled on the

record that it had the authority to modify the order, and the record is sufficient to preserve the issue for appellate review.

On the merits, the parties agree that the JAD is a consent judgment, subject to the rules governing judgments generally. Maryland Rule 2-535 governs the court’s “revisory power and control over the judgment” and contemplates cases of fraud, mistake, irregularity, newly discovered evidence, and clerical mistakes. It provides that parties can move to revise a judgment after thirty days in exceptional circumstances. But nobody is seeking to revise this judgment: both parties asked the circuit court to *enforce* it, and the JAD expressly reserved jurisdiction to enter QDROs “to effectuate the intent of the parties’ agreement[.]” And where there’s a reservation of jurisdiction to amend orders, a trial court is authorized “to ensure that the intent of the parties and the Judgment of Absolute Divorce [is] enforced.” *Mills*, 178 Md. App. at 736. The circuit court’s continuing jurisdiction in the JAD to effectuate the intent of the parties’ agreement gave the court the authority to resolve this implementation dispute, not Rule 2-535.

Next, Husband contends that the trial court “engaged in reformation because it actually changed a material term.” Although Husband asserts that Wife failed to “present[] any evidence of how any alleged mistake was made regarding the loan amount,” Wife testified that the number was reached during hasty courthouse back-and-forth between attorneys. And Husband offered no explanation for how the number in the JAD was reached. Throughout the trial court record, both parties repeatedly misstated the numbers, which bolsters Wife’s assertion that the JAD transfer amount was the result of a

mathematical or typographical error. And as we can see ourselves, the trial court’s factual finding that the transfer amount was based on a clerical or mathematical error was correct, and definitely not clearly erroneous.

More importantly, Husband himself asked the court to revisit the transfer amount. He asked the court expressly to do the math to “equalize the Retirement Accounts.” He stated himself that “[b]efore *the Court can determine the dollar figure amount of retirement assets* [Husband] will ultimately be receiving, the Court must determine what percentage of proportionate gains belong to the [Husband]. There is enough information in the Joint 9-207 Statement for the Court to make this determination.” (Emphasis added.) In addition, the JAD itself referenced the parties’ Joint 9-207 Statement (as did Husband in his own motion to enforce), and that statement showed the transfer amount that would effectuate the parties’ intent. The parties each provided testimony reflecting that the Joint Statement numbers were accurate (even if they went on to misstate them). The trial court had before it a transfer amount that was clearly wrong, and it was not reversible error to correct it to, in fact, equalize the parties’ retirement assets.

Finally, we disagree that Husband was deprived of due process. As he points out in his brief, a lower court’s “authority . . . to act in any case is . . . limited by the issues framed by the pleadings.” *Gatuso v. Gatuso*, 16 Md. App. 632, 637 (1973). As discussed above, Husband himself raised this issue in his own counter-motion to enforce. He expressly asked the trial court to consider the Joint 9-207 Statement to calculate an accurate transfer amount, and that’s what the court did.

We hold that the trial court relied properly on the JAD's specific reservation of jurisdiction to enter the QDROs to effectuate the intent of the parties. The trial court's finding that the transfer amount was grounded in math errors was not clearly erroneous, and the court didn't err or abuse its discretion in calculating the correct transfer amount and issuing QDROs to implement the corrected (and correct) transfer.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANT TO PAY
COSTS.**