

Circuit Court for Talbot County
Case No. C-20-FM-19-000036

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1054

September Term, 2020

CASEY R. GAINES

v.

KINDRA N. GAINES

Graeff,
Arthur,
Zic,

JJ.

Opinion by Graeff, J.

Filed: October 7, 2021

*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.

Casey Gaines (“Husband”) and Kindra Gaines (“Wife”) were married in 2008 and separated in 2018. The parties attached a Marital Settlement Agreement (“MSA”) to their complaint for divorce filed in February 2019. They subsequently amended the complaint to add an Addendum to the MSA (the “Addendum”), which altered key provisions of the MSA. On April 15, 2019, the Circuit Court for Talbot County issued a Judgment of Divorce, which incorporated, but did not merge, the parties’ MSA and the Addendum.

In October 2019, Husband filed a motion to set aside the Addendum based on lack of consideration, unconscionability, and fraud. In April 2020, Wife filed a petition to enforce the MSA and the Addendum, as well as a petition for contempt. The circuit court denied the motions.

On appeal, Husband presents the following questions for this Court’s review:

1. Did the trial court err as a matter of law in holding that the Addendum to Marital Settlement Agreement dated March 4, 2019, did not require mutual consideration?
2. Did the trial court err in holding that the Addendum to the Marital Settlement Agreement was not unconscionable and void as a matter of law?
3. Did the trial court err in finding that Wife’s actions did not constitute extrinsic fraud requiring the court to exercise revisionary power pursuant to Md. Rule 2-535(b) to set aside the Addendum to Marital Settlement Agreement.

On cross-appeal, Wife presents the following additional question:

Did the trial court err as a matter of law in failing to enforce the Addendum to Marital Settlement Agreement and to award Wife the damages she sought?

For the reasons set forth below, we shall: (1) affirm the judgment of the circuit court denying Husband's motion to set aside the Addendum; and (2) dismiss Wife's appeal of the denial of her petition to enforce the Addendum.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Background Facts

Husband and Wife were married at a religious ceremony in Frederick, Maryland on October 12, 2008. They did not have any children. The marital home which was titled solely in Husband's name was located in Lusby, Maryland. The home was subject to a mortgage held by Carrington Mortgage Services ("Carrington") in Husband's name. Prior to the parties' separation, Husband was employed as a flight engineer with the Department of Defense ("DOD") and co-owned a "side business" selling real estate with a partner. Wife also worked in real estate until the time of the separation.

In May 2018, the parties separated, and Wife moved out of the marital home. In late 2018 and 2019, Wife spent a significant amount of time in Turkey.¹ In March 2019, Husband moved to the state of Washington to start a new job. Wife moved back into the marital home in May 2019.

¹ In the summer of 2018, Wife began dating a man in Turkey, and in May 2020, she married him.

During the separation period, the parties negotiated the terms of the MSA over e-mail and “WhatsApp” messages.² They reached an agreement in December 2018, and Wife’s attorney drafted the formal document. Husband did not consult counsel on the matter. Both parties signed the MSA on February 1, 2019.

As pertinent to the issues before us on appeal, the MSA provided as follows: (1) Husband would provide medical and dental insurance for Wife through November 1, 2019; (2) Husband would maintain his life insurance policy through work for the benefit of Wife; (3) all personal property in the marital home would become the sole property of Wife, with the exception of Husband’s tools, guns, and certain furniture; (4) Wife would retain her 2004 BMW and 2012 Mercedes, and Husband would retain his Chevrolet Silverado and Honda motorcycle and pay for the parties’ car insurance through November 2019; (5) Husband’s Thrift Savings Retirement Plan (“TSP”), with a fair market value of \$148,810 at the time of divorce, would be equally divided between the parties; (6) Husband would pay Wife a \$20,000 monetary award “as a property settlement”;³ and (7) both parties mutually waived any present and future claims for alimony.

² In part because Wife was frequently abroad, the parties often communicated via the electronic messaging application “WhatsApp,” which utilizes WiFi rather than phone service.

³ Husband testified at trial that they intended for Wife to spend the \$20,000 to renovate the basement of the marital home so that she could live downstairs and rent out the upstairs.

With respect to the marital home, the MSA provided that Husband would add Wife's name to the deed within 45 days and reside in the home until May 1, 2019, at which time Wife would have exclusive use and possession. Wife would then have three years to purchase the home from him for the cost of the outstanding mortgage, or if she was unable to do so within that timeframe, she would have a right to "rent to own." If Wife did neither within the three-year period, the house would be sold with the proceeds split evenly. Husband would be responsible for the mortgage payments until Wife purchased it or it was sold on the market.⁴

On the same day that the MSA was signed (February 1, 2019), Wife filed a Complaint for Absolute Divorce in the Circuit Court for Talbot County. Shortly thereafter, the parties learned that Carrington would not allow Wife to be added to the deed. As a result, the parties began to discuss modifying the MSA.

The events surrounding the formation of the Addendum were disputed by the parties. Husband testified that Wife, who was not working at the time, texted him in late February 2019 and asked him to call her because she had a "great idea" regarding the problem with Carrington. She suggested amending the MSA to create an arrangement whereby Husband would pay her monthly alimony to show the mortgage company that she had income, which would allow her loan application to be quickly approved. She promised

⁴ On appeal, Husband states that, despite the provision in the MSA, Wife subsequently agreed to pay the mortgage after she moved into the house on May 1, 2019.

to set up a savings account for the alimony payments, and after the loan was approved and the house sold to her, she would return the alimony money to him.

Wife testified that Husband offered to pay her alimony to cover her expenses because he was starting a new job and “didn’t want [her] to have to support [herself] and wanted to take care of [her].” She stated that there was never any agreement to return the money or to use it solely to show the mortgage company that she had income.

On March 4, 2019, Wife filed an Amended Complaint for Absolute Divorce, seeking to incorporate the Addendum into the divorce judgment. As pertinent to this appeal, the Addendum provided for the following changes and additions to the MSA: (1) extended Husband’s coverage of Wife’s health and car insurance policies from November 1, 2019, to November 1, 2020 (i.e., a one-year extension); (2) reiterated that Husband would maintain a life insurance policy for Wife’s benefit, but eliminated the language tying it to his employment status; (3) entitled Wife to 100% of Husband’s TSP retirement account (rather than 50% under the MSA); (4) eliminated the requirement for Husband to add Wife to the deed within 45 days of the MSA signing; and (5) eliminated the mutual waiver of alimony clause and substituted a provision requiring Husband to pay Wife non-modifiable alimony in the amount of \$4,200 per month for a term of 30 years.

Husband did not consult an attorney during the negotiations regarding the Addendum. Both the MSA and the Addendum included a provision stating that Husband had been advised and “afforded every opportunity to obtain independent counsel” and his

decision to execute the agreements without independent counsel was freely and voluntarily made.

On April 15, 2019, the circuit court held an uncontested divorce hearing. Both parties were present, with Wife represented by counsel and Husband appearing as a self-represented litigant. The parties introduced both the MSA and the Addendum and asked that they be incorporated into the divorce judgment. Husband testified that the two documents represented the “full and complete understanding of the agreement” reached with Wife, and there was no further agreement between the parties that was “not written down in those two documents.” He further stated that he signed the documents freely and voluntarily.

Following the uncontested hearing, the circuit court issued a Judgment of Divorce, which incorporated, but did not merge, the MSA and Addendum. In the initial months that followed, the parties complied with the terms of the MSA and Addendum.

II.

Parties’ Motions

On October 28, 2019, Husband filed a Complaint for Declaratory Relief, Motion to Set Aside Agreement and Revise Judgment, seeking to set aside the Addendum to the MSA. Husband alleged that, following the parties’ separation in 2018, he suffered from “significant depression and was engaging in self-destructive behavior,” which resulted in the loss of his employment. With regard to alimony and refinancing of the marital home, Husband stated as follows:

[S]hortly after filing [the Complaint for Absolute Divorce], [Wife] began discussions with [Husband] regarding the refinance of the marital home pursuant to paragraph 8 of the parties' [MSA]. [Wife] indicated to [Husband] that she was unable to qualify for the refinance. [Wife] told [Husband] that in order to qualify for the refinance, she would need to show the bank that she had more monthly income and assets to support her ability to pay. [Wife] asked [Husband] to execute an "Addendum" purely to show the bank "on paper" that she would have funds to support the refinance, but at all times assuring [Husband] that she only needed it for the purposes of securing a loan and that she had no intent of actually amending their agreement and she would not enforce the provisions of an amendment.

* * *

[I]n fact, all the provisions in the addendum, solely benefit Wife with zero consideration for said benefit and divest Husband of any and all assets of the marriage.

* * *

Shortly [after the Judgment of Divorce], [Wife] began demanding payment of [Husband] pursuant to those provisions contained in the Addendum signed by the parties despite her previous representations.

Husband requested a declaratory judgment stating that the Addendum was void due to lack of mutual consideration or, in the alternative, because it was unconscionable. He alleged that he had "no meaningful choice in signing the [A]ddendum as he was deceived by [Wife], who made promises and inducements for his signature at all times knowing he was dealing with significant depression as a result of the parties' separation." Husband requested that the court establish a constructive trust for his benefit to hold the assets transferred to Wife pursuant to the Addendum and order her, as constructive trustee, to convey all of her rights in those assets back to Husband. He further requested damages "equal to the assets which [Wife] may have used and expended for her benefit."

Husband's motion also included a fraud count, alleging that Wife "fraudulently and intentionally deceived [Husband]" into signing the Addendum, "knowing that [Husband] would rely upon her promises and statements that she would not seek enforcement of the [A]ddendum provisions." He alleged that he was "in shock" when Wife indicated to him that "she was not going to refinance the marital home and that she expected him to start making monthly payments pursuant to the Addendum." He could not afford to pay the "excessive" alimony payments, and Wife had threatened to seek contempt actions against him if he did not pay. Accordingly, Husband asked the court to exercise its revisionary power pursuant to Md. Rule 2-535 to set aside the Judgment of Absolute Divorce and the Addendum as invalid and void.

On April 1, 2020, Wife filed a Petition to Enforce Marital Settlement Agreement and Addendum.⁵ She alleged that Husband began a job with Boeing in February 2019, whereas Wife was "struggling to make her expenses." As a result, Husband "agreed to help [her] meet her expenses by paying her alimony of \$4,200 a month for 30 years, which [Husband] felt he could afford now that he obtained a higher salary level and this agreement was placed in the Addendum."

⁵ On April 29, 2020, Wife filed an answer to Husband's complaint denying his version of events regarding the formation of the Addendum. She stated that both parties had "extensive experience" in real estate, and it was "completely unfeasible that [Husband] would believe that a loan would be provided based solely on contractual language and not actual payments." Wife requested that the court enforce the Addendum and deny Husband's request to set it aside.

Wife stated that, after the Judgment of Divorce, she became engaged to another man. When Husband learned about the relationship, he threatened to “renege on the MSA and Addendum.” She noted that the Addendum Husband signed included a clause stating that it was not signed as a “result of any fraud, duress or undue influence.” Wife had purchased the marital home in December 2019.

Wife’s petition then alleged the following facts:

19. [Husband] has not:

- a. Paid for the repairs for the Marital Home in the amount of approximately \$30,000.00.
- b. Reimbursement for insurance (Medical was \$347[.]25/month and as of January, 2020 down to \$309.20/month) for a total of \$1,274.85 through March, 2020.
- c. Tax obligation of \$660.00.
- d. Paid the car payment of \$544.44.
- e. Paid the monetary award of \$20,000.00.
- f. Paid the house payments (\$14,570.90), Electric Bill (\$901.65) and Water bill (\$177.02).
- g. Paid the alimony which is in arrears of approximately \$12,600.00 as of March 31, 2020.

Additionally, she requested that Husband be responsible for her attorney’s fees as a result of his default on the terms of the MSA.⁶

⁶ On the same day that she filed the Petition to Enforce the MSA, Wife also filed a Petition for Contempt against Husband for these alleged unpaid amounts. Wife does not challenge the denial of this petition in her cross-appeal, and therefore, we need not discuss it further.

As pertinent to the cross-appeal, Wife's prayer for relief stated as follows:

WHEREFORE. Plaintiff, KINDRA R. GAINES, respectfully requests the following relief:

- A. That Petition to Enforce Marital Settlement Agreement and Addendum be **Granted**;
- B. That [Husband] be ordered to pay [Wife's] reasonable counsel fees and costs as they relate to this Motion to Enforce Marital Settlement Agreement and Addendum.
- C. For such other and further relief as this Honorable Court deems just and proper.

A.

Motions Hearing

On September 14, 2020, the circuit court held a hearing on Husband's motion to set aside the MSA/Addendum, Wife's petition to enforce the MSA and Addendum, and Wife's contempt petition. At this point, Husband was represented by counsel, who began by arguing that, because the MSA and Addendum were incorporated into, but not merged with, the divorce judgment, the case involved contract interpretation.⁷ He argued, as he did in his motion, that the Addendum was void because it lacked consideration by Wife as she did not give up anything in exchange for the agreement. Counsel disagreed with the court's assertion that the time to challenge the Addendum was prior to entry of judgment, and that once the judgment was entered, a motion pursuant to Rule 2-535 was the only way

⁷ Husband's counsel also clarified that they were only challenging the Addendum, not the MSA originally drafted and submitted to the court with the divorce complaint.

to attack the judgment.⁸ Counsel argued that, if the court agreed that the Addendum was void, the Addendum would be set aside, the original MSA would control, and the judgment incorporating that agreement would be valid.

Husband next argued that the Addendum was voidable because it was substantively and procedurally unconscionable. With regard to procedural unconscionability, he argued that Wife deceived him into signing the Addendum.⁹ With respect to substantive unconscionability, he argued that the alimony award originally was zero under the MSA, but the total of almost \$1.5 million under the Addendum was excessive on its face and in relation to his income. He asserted that, at the time the Addendum was negotiated, Husband's income was approximately \$100,000 to \$125,000 per year, and the alimony provision required him to pay Wife approximately \$50,000 per year.

⁸ Rule 2-535 provides, in part, as follows:

(a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

(b) Fraud, Mistake, Irregularity. 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.

⁹ Counsel conceded that the parties arguably conspired to commit "mortgage fraud."

With regard to the TSP account, Husband argued that the Addendum essentially gave “him less than zero dollars.” Counsel also argued that the fraud committed by Wife was extrinsic because the nature of Wife’s promise regarding the alimony and mortgage approval prevented Husband from raising the issue prior to the divorce judgment.

Counsel for Wife argued that Husband essentially was asking the court to help him change a “bad deal.” She asserted that Husband, a sophisticated litigant, agreed to the amended terms in the Addendum. To the extent that Husband now claimed that he was a participant in an effort to defraud a mortgage company, a claim that Wife denied, the court would have to decide whether Husband was lying now or at the divorce hearing. With respect to Husband’s argument that the Addendum was void for lack of consideration, Wife argued that Husband benefited from the agreement in various ways, including the “absence of litigation” and a “good conscience” after his poor behavior throughout the marriage. Wife asserted that the motion to set aside the Addendum was motivated by his discovery of her new relationship.

Husband introduced the parties’ WhatsApp messages and e-mails, in which they negotiated the terms of the original MSA and the Addendum. The messages showed that, from November 2018 to January 2019, the parties engaged in detailed negotiations regarding all the issues addressed in the MSA. Husband testified that, as part of the negotiations, they briefly discussed alimony but ultimately decided against it.

Husband testified that, while they were negotiating the terms of the MSA, he was struggling with various professional and personal problems. He testified that he was an

alcoholic, and in November 2018, following two DUIs, he was placed on unpaid leave at his job with the DOD, and his security clearance was revoked. He enrolled in outpatient rehabilitation, and by the time of the motions hearing, he had not had alcohol since November 2018.

Husband also testified that his side business selling real estate “started going south” in 2015-2016. After the business was dissolved, he and his partner negotiated a settlement that left him \$50,000 in debt to a former investor.

From November 2018 to March 2019, he was able to perform “odd jobs” to make ends meet, but he did not have a consistent income, and he had only \$1,000 in savings (aside from his TSP retirement account). At the time the MSA was finalized in February 2019, he did not have steady income or employment. In early March 2019, however, he moved to Seattle, Washington to start a new job at Boeing pursuant to a short-term contract. His net income was \$10,000 per month under his contract, but his contract was terminated in April 2020 due to the COVID-19 pandemic. At the time of the hearing, he was working at a small flight test company in Seattle, earning a net income of approximately \$7,000 per month.

The parties’ WhatsApp messages showed that, soon after the MSA was filed on February 1, 2019, they began to renegotiate certain terms. In mid-February 2019, Wife sent Husband a message asking if he had time for a phone call because she had an idea regarding their finances. Husband testified that, when he called her back, Wife stated that it would take a long time to secure a mortgage because she was unemployed and did not

have any income. She suggested that she would be able to secure the loan faster if the “alimony paperwork” showed that she had consistent income. Wife offered to set up a savings account and “put 100% of the alimony” into it, and when she successfully bought the house, she would give the money back to him. She assured him that he would only have to make the monthly payments for approximately six months to a year, i.e., until she could secure the financing.

With regard to the non-modifiable nature of the alimony provision, and the fact that it did not terminate upon remarriage, Wife told him that those items needed to be included because “otherwise the bank wouldn’t accept it.” She said that the 30-year term also was necessary because the mortgage company was requiring her to obtain a 30-year mortgage.

Husband testified that, shortly after the MSA was signed, he learned that he would be able to withdraw from his TSP only his actual contribution amount. As a result, Wife suggested that they amend the MSA to provide her with 100% of his TSP so that she could access the full amount, and then she could give his half (less the \$20,000 monetary award) back to him to roll over into a new retirement account.

During the subsequent negotiations, Husband felt “very overwhelmed” and was suffering from panic attacks. He testified that the “thought of letting her ha[ve] all this and giving her all this control over [him]” made him feel “very vulnerable.” Wife reassured him that she would “honor” her side of the arrangement, and he believed her. After the Addendum was signed, he sent her multiple messages saying that he was having anxiety about the situation, but he trusted her.

Husband introduced the parties' WhatsApp messages showing that, on March 26, 2019, he told Wife that Boeing had offered him a permanent position, but it would be for less money, so it would be difficult to afford the \$4,200 per month in alimony. Wife responded by stating: "Are you serious right now? . . . You can't go back on this. . . . We've already agreed . . . [a]nd you know exactly why I asked for it." Husband testified that she was referring to the fact that she needed the alimony to get the mortgage loan. Later that same evening, Wife messaged: "You're trying to change the deal which is NOT an option right now." As the conversation continued, Husband stated: "Okay I just want you to say that you will still honor what we agreed on . . . cause I'm worried." Husband testified that these messages were an attempt to get her to provide something in writing, which she had previously "refused" to do. On April 23, 2019, Husband sent a message to Wife stating:

I just hope I can trust you to honor what you have told me cause all the paperwork leaves me completely helpless. You know I am only doing all this to help you! If I would have fought you there isn't a judge on earth who would have giving [sic] you alimony or not made you buy the equity from the house or gave you more than half of the tsp. Not one. But [I] trust you and care about you.

On April 26, 2019, after the divorce judgment, Husband messaged Wife:

"How you manipulated me to agree to pay alimony [sic] to help you get the house[.] . . . Promising me you will keep it in savings[.] . . . And now using it against me is truly evil[.] . . . I cannot believe you[.] Now I have to trust you with the [TSP] and that you will honor your word and only take half plus the [\$]20,000?"

Husband testified that he paid the monthly alimony and other obligations pursuant to the Addendum for approximately eight months (May 2019 to December 2019). After Wife purchased the marital home in December 2019, however, he stopped making

payments because Wife did not honor their agreement to return the alimony money after obtaining financing for the home, and she withheld the full amount of the TSP.

At his new job at the flight test company, Husband earned a net income of approximately \$7,000 per month, and when taking into account his various expenses and debts, he did not have the ability to pay Wife the \$4,200 per month in alimony. He stated that he did not gain anything by signing the Addendum.

On cross-examination, Husband acknowledged that he was not truthful when he testified at the uncontested divorce hearing that the MSA and Addendum represented the full agreement of the parties and he had not been induced by anyone to enter into the agreements. Husband further conceded that the messages showed that he agreed to the amendments regarding the house, TSP, and insurance costs in a series of messages on February 13, 2019. Moreover, Wife's counsel directed his attention to a WhatsApp message sent on February 25, 2019, in which Husband stated that he was upset about moving and that Wife "will need the alimony."

Wife testified that she had been employed by Remax since 2014, but her income was commission-based and fluctuated from year to year. In 2018, she "put [her] license on hold" and took a leave of absence while the parties were separating. During the period when the parties were negotiating the MSA and Addendum, Wife did not have any income.

Wife testified that the parties began to renegotiate the terms of the MSA because they learned that she could not be added to the deed and Husband likely would be moving to Seattle for the job with Boeing. The "idea" she referred to in the February 23 message

was that she would obtain a loan to cover the additional expenses (beyond the \$20,000 already provided for in the MSA) for renovating the basement of the marital home.

Wife maintained that there was never any agreement not to enforce the alimony provision after she obtained financing or for her to repay the alimony payments or a portion of the TSP. She used the alimony payments Husband made from May to December 2019 to pay expenses for the home, including the mortgage payments. When he stopped making those payments, she paid for the mortgage and her other expenses using the TSP, which had been transferred to her in the form of a check for approximately \$156,000.

The parties decided on alimony in the amount of \$4,200 per month because that was the total of her expenses. They decided on a 30-year term for the alimony because Husband intended to work for another 30 years.

When asked why Husband would agree to pay \$1.5 million in alimony only a few weeks after signing the MSA that provided for zero alimony, Wife stated that Husband “wanted to take care” of her and “didn’t want [her] to have to support [herself]” after he learned that he was going to have a steady income from Boeing, which she characterized as a “major life change.” Additionally, she thought he “felt guilty” for starting rumors about her in their circle of friends and for other conduct throughout the marriage.

Wife conceded that Husband did not receive any tangible benefit in exchange for his agreement to amend the MSA provisions regarding alimony, extension of payment of the insurance premiums, the deed transfer, and the TSP. She asserted, however, that he received certain non-monetary benefits such as avoiding the time, effort, and expense of

litigation and adding her to the deed. She further referred to a letter he sent to her, apologizing for his drinking and stating that he loved her and wanted “to make sure [she was] taken care of.”

At the close of testimony and argument by counsel, the court took the matter under advisement.

B.

Order & Memorandum Opinion

On October 23, 2020, the circuit court issued, and the clerk entered on the docket, an Order and Memorandum Opinion denying Husband’s motion to set aside the Addendum and Wife’s petition for contempt. The court began by addressing Husband’s motion to set aside the Addendum based on lack of consideration, unconscionability, and extrinsic fraud. It found that the Addendum did not require consideration as a matter of law because it was signed under seal. The court noted that Husband “carried out the obligations under the Addendum,” thereby showing that “he manifested an assent to be bound by the Agreement... and thus the Addendum [was] enforceable as signed.”

The court recognized that a separation agreement may be set aside “if the terms of the agreement are so unconscionable that they shock the conscience of the court or if it was procured by fraud.” With respect to unconscionability, the court noted that “an unconscionable contract is characterized by extreme unfairness by one party’s lack of meaningful choice and the contractual terms unreasonably favor the other party.” It stated:

When looking at both the original Agreement and the Addendum, it is apparent that [Wife] is receiving more benefit from the agreements than

[Husband] is. However, as discussed previously, agreements do not need to be equal to be valid. *Shih Ping Li [v. Tzu Lee]*, 210 Md. App. [73, 99 (2013)]. In fact, for a settlement agreement to be set aside it needs to be so egregious that it gives all the benefits of the agreement to only one party. *See Williams v. Williams*, 306 Md. 332 (1986). [Husband] argues that he did not get any added benefit from the Addendum and therefore it disproportionately favors [Wife]. However, the Addendum did not revoke the Agreement. Rather, it only changed certain provisions. [Husband] still had the interest rights to the listed individual property, he had an interest in the selling of the house, and he owned all rights to any business assets he had. [Husband] testified that he feels like he has gotten the bad end of the deal, [but] contracts cannot be set aside just because one party thinks it was a bad deal. *See Janusz [v. Gilliam]*, 404 Md. [524, 535 (2008)]. Since Mr. Gaines still received benefit under the entirety of both agreements, the court does not find the Addendum “shocking to the conscience” and thus it is not unconscionable.

The court further found that the Addendum should not be side aside due to fraud. It noted that once there has been a judgment, “that should be the end of [the] litigation” unless there is a showing that extrinsic fraud prevented an adversarial trial. The court found no such fraud in this case, stating:

[Husband] had the opportunity to testify that he did not agree to the terms of the Agreement and Addendum, but by admission, he elected to perjure himself. [Wife] did not thwart or prevent an adversarial hearing.

Finally, the court denied Wife’s contempt petition. It stated that, although “the Addendum may be an enforceable contract,” the payments listed as “alimony” in the Addendum were “not technically alimony” because alimony terminates at the death of the spouse or when she remarries. *Horsey v. Horsey*, 329 Md. 392, 410 (1993); *McAlear v. McAlear*, 298 Md. 320, 337 (1984). The court concluded that, because the obligation to pay Wife was not alimony, it could not hold Husband in contempt for failing to make the

payments.¹⁰ It stated that whether Wife has “another avenue of relief is not before the court.”

C.

Subsequent Proceedings

On November 10, 2020, 18 days after the entry of the judgment, Wife filed a motion for reconsideration pursuant to Md. Rules 2-534 and 2-535.¹¹ She argued that the court had failed to rule on her Petition to Enforce the MSA and the Addendum in its October 23, 2020 Order and Opinion, and without a ruling on this petition, there was no final judgment. She also argued that the court did not rule on several contempt claims other than alimony, including Husband’s failure to pay the monetary award for repairs, car insurance, and other items set forth in the Addendum.

On November 19, 2020, Husband noted a timely appeal from the court’s order denying his motion to set aside the Addendum. On November 23, 2020, Wife noted a cross-appeal.

¹⁰ The court denied Husband’s Motion to Set Aside the Addendum and Wife’s Petition for Contempt, but it did not address the Wife’s Petition to Enforce the MSA and the Addendum.

¹¹ Rule 2-534 provides that, on motion filed within ten days after the entry of judgment, the court may amend its findings on the judgment. Rule 2-535(a) & (b) provide that, on motion filed within 30 days after entry of judgment, the court may exercise revisory control over the judgment, and on motion filed at any time, may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

On March 4, 2021, the circuit court issued another Order and Memorandum Opinion denying Wife's motion for reconsideration. With respect to Wife's petition to enforce the MSA and the Addendum, the court stated as follows:

Upon review of the Petition to Enforce the Marital Settlement Agreement, [Wife] failed to claim the specific relief she is seeking beyond mere enforcement. Pursuant to Rule 2-305, "[a] pleading that sets forth a claim for relief . . . shall contain a clear statement of the facts necessary to constitute a cause of action and demand for the relief sought." Md. Rule 2-305 (emphasis added). Within the Petition, [Wife] requested the following relief: "(a) That Petition to Enforce Marital Settlement Agreement and Addendum be Granted; (b) That Defendant be ordered to Pay Plaintiff's reasonable counsel fees and costs as they relate to this Motion to Enforce Marital Settlement Agreement and Addendum; (c) For such other and further relief as this Honorable Court deems just and proper." [Wife] fails to make a demand for the type of relief she is seeking, thus the Court cannot grant or deny her any relief regarding the enforcement of the Marital Settlement Agreement. The Court recognizes, as it explained in its previous memorandum and opinion, that the [MSA] is an enforceable agreement and which relief [Wife] seeks to enforce the agreement is up to her. However, without a specific relief requested, the Court cannot grant the Petition to Enforce the [MSA].

The court then reiterated that the payments discussed in the Addendum were not alimony, this time focusing on the provision that the payment obligations were to continue after Husband's death, with the burden on his estate to maintain the payments. The court denied Wife's motion, as well as Husband's motion for reconsideration. It stated that it affirmed its "[j]udgment denying the Plaintiff's Petition for Contempt, the Plaintiff's Petition for Enforcement of Settlement Agreement, and the Defendant's Motion to Set Aside the Marital Settlement Agreement."

STANDARD OF REVIEW

In reviewing the court's decisions in this case, the appropriate standard of review is as follows:

When an action has been 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 credibility of the witnesses.

Md. Rule 8-131(c).

DISCUSSION

I.

Motion to Set Aside Addendum

Husband contends that the trial court erred in denying his motion to set aside the Addendum for multiple reasons. First, he argues that it was void because there was no consideration, and the court improperly found that mutual consideration was not required because the Addendum was executed "under seal." He asserts that the Judgment of Absolute Divorce, which incorporated the MSA and Addendum, "cannot 'fix' the underlying void agreement."

Second, Husband contends that the Addendum was unconscionable, and the trial court misstated the law when it determined that a contract may only be set aside based on unconscionability only when it is "so egregious that it gives all the benefits of the agreement to only one party." Third, he contends that the trial court erred in finding that Wife's actions did not constitute extrinsic fraud, requiring the court to set aside the Addendum.

Wife contends as an initial matter that Husband's motion to set aside the Addendum as void was an improper collateral attack because he should have raised any challenges to it before judgment was entered on the divorce. She further asserts that the Addendum does not "stand alone" and cannot be challenged separately from the MSA.

With respect to the Husband's specific arguments, Wife contends that the trial court correctly found that the Addendum was a valid agreement. She asserts that the trial court properly found that consideration was not necessary because the MSA and the Addendum were executed "under seal." Even if consideration was necessary, Wife argues that the Addendum was supported by ample consideration because both parties freely negotiated for terms that allowed them to avoid litigation and Husband received a benefit in the form of his vehicles, an interest in the business, sale of the marital home, and relief from his obligation to add Wife to the deed and to pay the mortgage. She further asserts that the trial court properly found that the Addendum was not unconscionable. Finally, she asserts that "the trial court properly concluded "that there was no extrinsic fraud which would require it to set aside the Addendum."

We agree with Wife that Husband cannot now collaterally attack the Addendum. The Court of Appeals has held that, where a marital settlement agreement is incorporated but not merged into a divorce decree, the agreement may not be collaterally attacked because its validity is conclusively established by the decree, which operates as *res judicata*. *Johnston v. Johnston*, 297 Md. 48, 49, 66 (1983).

In *Johnston*, the parties executed an agreement that was incorporated but not merged into the divorce decree. *Id.* at 49–50. Mr. Johnston subsequently filed a petition to set aside and void the agreement on the ground that he suffered from mental incompetency during the negotiation and signing of the agreement. *Id.* at 50–51. In addressing the claim, the Court of Appeals discussed the significance of an agreement that is incorporated but not merged into a decree. In that situation, “the agreement remains a separate, enforceable contract” between the parties, and its terms also “become part of the decree, modifiable by the court where appropriate and enforceable through contempt proceedings.” *Id.* at 56–58. Once an agreement has been approved and incorporated into a divorce decree, however, “the validity of the agreement is conclusively established and the doctrine of *res judicata* operates so as to preclude a collateral attack on the agreement.” *Id.* at 66.

Husband relies on a sentence in the *Johnston* opinion where the Court stated that an agreement incorporated, but not merged, into a divorce decree remains an independent contract that “in some instances could be attacked separately from the decree.” *Id.* at 58. The Court did not elaborate on the meaning of this sentence, but it could be interpreted as saying that a party could independently challenge the scope of the terms set forth in the agreement. The Court made clear, however, that in the situation presented here, where an agreement is incorporated but not merged into a divorce decree, a party may not challenge the *validity* of the agreement. Accordingly, the Court in *Johnston* affirmed the circuit court’s ruling granting Mrs. Johnston’s motion to strike Mr. Johnston’s petition to set aside the agreement. *Id.* at 67.

Similarly, here, Husband is correct that the Addendum, which was incorporated, but not merged, into the Judgment of Divorce, survives as a separate, enforceable contract between the parties. The doctrine of *res judicata*, however, precludes Husband from making a collateral attack on the agreement because its validity has already been approved by the judgment.

Husband next contends that the circuit court erred in “failing to exercise its revisory power pursuant to Md. Rule 2-535(b) to set aside the Addendum” because Wife’s actions constituted extrinsic fraud. Rule 2-535, however, gives the court revisory authority over a *judgment* in the case of fraud. Husband’s challenge in this case is with respect to the Addendum, not the judgment.¹² The circuit court properly denied Husband’s collateral attack on validity of the Addendum.

II.

Cross-Appeal

In her cross-appeal, Wife contends that the trial court erred when it denied her Petition to Enforce the Marital Settlement Agreement (“the Petition to Enforce”) and failed to award her damages. She asserts that the court erroneously found that she did not make a demand for the type of relief she was seeking, noting that she produced evidence

¹² Even if Rule 2-535 applied to Husband’s claim, it does not allege extrinsic fraud, which is required to reopen an enrolled judgment. *See Hresko v. Hresko*, 83 Md. App 228, 231 (1990). *Accord Facey v. Facey*, 249 Md. App 584, 616–18, *cert. denied*, No. 62, Sept. Term, 2021 WL 4096582 (Md. 2021).

regarding the damages she incurred as a result of Husband's breach of the agreement. She contends that her general prayer of relief was sufficient for the court to grant her the equitable relief she sought.

Husband contends that the circuit court correctly declined to grant the Petition to Enforce and award damages to Wife because she did not include that request in her prayer for relief as required by Md. Rule 2-305.¹³ Husband further contends that the "ability of a court to fashion a remedy in equity is discretionary," and in this case, the evidence supported a decision not to award damages in the amounts listed in the pleading.

We will not address the merits of the issue because a timely notice of appeal was not filed after the court denied Wife's Petition to Enforce. A timeline of events is helpful to understand why this issue is not properly before us. On April 15, 2019, the circuit court entered a final judgment in the divorce proceedings. The parties subsequently filed separate post-judgment pleadings, including Wife's Petition to Enforce. On October 23, 2020, the court issued an order and accompanying memorandum opinion denying Husband's motion to set aside the Addendum and Wife's petition for contempt. This order did not contain a ruling on Wife's Petition to Enforce.

On November 10, 2020, 18 days after the circuit court ruling, Wife filed a Motion for Reconsideration of the court's October 23 order. In the motion, Wife stated that the court failed to rule on her Petition to Enforce, and without a ruling, there was not a final

¹³ Md. Rule 2-305 provides that "[a] pleading that sets forth a claim for relief . . . shall contain a clear statement of the facts necessary to constitute a cause of action *and a demand for judgment for the relief sought*." (Emphasis added.)

judgment. On November 19, 2020, Husband filed a notice of appeal in this Court. On November 23, 2020, Wife noted an appeal, and Husband filed a motion to reconsider in the circuit court.

On March 4, 2021, the circuit court issued an order denying Husband's motion to reconsider. Presumably, because Wife's post-judgment petition was a separate proceeding from Husband's post-judgment motion, the court issued a separate order denying Wife's motion to reconsider. In its memorandum opinion denying Wife's motion to reconsider, the court addressed, for the first time, the Petition to Enforce, and it explained why it could not grant the petition.¹⁴

Here, in Wife's cross-appeal, she is challenging the court's ruling regarding her Petition to Enforce. Md. Rule 8-202(a) provides, however, that "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken," but Wife did not note an appeal after the court's March 4, 2021 ruling on this petition. Thus, there was not a timely appeal of this decision.

Accordingly, we shall dismiss Wife's cross-appeal. *See* Md. Rule 8-602(a)(b) (The Court may dismiss an appeal if the notice of appeal was not filed within the time prescribed by Rule 8-202).

¹⁴ To be sure, the court subsequently stated that it was affirming its judgment denying the Petition to Enforce. Wife recognized below, however, and we agree, that the court did not rule on the Petition to Enforce in its initial order.

**JUDGMENT OF THE CIRCUIT COURT
FOR TALBOT COUNTY DENYING THE
MOTION TO SET ASIDE THE
AGREEMENT AFFIRMED. CROSS-
APPEAL DISMISSED. COSTS TO BE
SPLIT EQUALLY BY THE PARTIES.**