Circuit Court for Prince George's County
Case No. CAE16-24745

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1218

September Term, 2017

PEGGY ANN MARTIN

v.

JEAN ROBERT DOLET

Fader, C.J.,
Wright,
Leahy,

JJ.

Opinion by Fader, C.J.

Filed: February 5, 2019

We are asked to determine whether the Circuit Court for Prince George's County abused its discretion in denying Ms. Peggy Ann Martin's motion to reconsider the court's order to appoint a trustee to sell the property located at 1709 Peachtree Lane, Bowie, Maryland 20721. We conclude that the circuit court did not abuse its discretion and affirm.

BACKGROUND

Ms. Martin and Mr. Jean Robert Dolet purchased the Peachtree Lane property while they were married. When they separated in 2004, Mr. Dolet continued to reside at Peachtree Lane while Ms. Martin moved to an apartment in Silver Spring, Maryland.

In March 2013, the Circuit Court for Prince George's County granted the couple a Judgment of Absolute Divorce in a decree that incorporates, but does not merge, the terms and conditions of the parties' divorce agreement. With respect to Peachtree Lane, the agreement states:

> The parties own as tenants by the entirety, in fee simple, the real property located at 1709 Peachtree Lane Bowie, Maryland 20721. Said property is subject to a lien of a mortgage. The parties agree that Husband shall have sole ownership of the Husband's home after the execution of this Agreement. Husband shall be solely responsible for all principal, interest, insurance and tax payments related to Husband's home, without any contribution from Wife. If Husband sells Husband's Home, Husband shall share any proceeds from the sale of the property 50/50 with Wife. Upon vacating the Husband's Home, Husband hereby agree [sic] to deed the Home to the Wife in Fee Simple.

In June 2016, Mr. Dolet initiated this action by filing a complaint seeking a declaratory judgment and sale in lieu of partition of the Peachtree Lane property. The complaint alleges that Mr. Dolet vacated the property in August 2013, but only after coming to an agreement with Ms. Martin that: (1) instead of selling the property, he would

allow her to take possession of it; and (2) in turn, she would take over responsibility for the mortgage and all expenses and would refinance the mortgage into only her name. The complaint further alleges that although Ms. Martin initially paid the mortgage and expenses as agreed, she had recently begun to miss payments, causing Mr. Dolet to have to spend more than $5,000 to keep the mortgage and related payments current. Moreover, the complaint alleges, Ms. Martin had failed to refinance the mortgage and had recently taken the position that she was "entitled to exclusive use and possession of" the property and that he still had responsibility for the mortgage. The complaint seeks: (1) a declaration that Ms. Martin is responsible for the mortgage and other expenses related to the Peachtree Lane property, that she must refinance the mortgage only in her name, and that Mr. Dolet maintains the right to sell the property (Count I); and (2) a sale in lieu of partition of the property pursuant to § 14-107 of the Real Property Article (Repl. 2015) (Count II).

In July 2016, after Ms. Martin had not responded timely to his complaint, Mr. Dolet filed a motion for default. In August, still with no word from Ms. Martin, the court entered an order of default. Ms. Martin then filed an emergency motion opposing the order of default on the ground that Mr. Dolet's motion had cited an incorrect mailing address for her.[1] The court then set a combined hearing on the order of default and Ms. Martin's emergency motion. At the hearing, the parties requested a continuance to discuss

[1] The motion identified a mailing address of 15900 Penn Manor Lane, rather than her address of 15906 Penn Manor Lane. However, Ms. Martin's address is correct on the complaint itself and Mr. Dolet filed an affidavit of service stating that Ms. Martin was served personally and listing her correct address.

settlement[2] and the court, with express concurrence of the parties, agreed to reschedule the hearing to January 13, 2017.

Ms. Martin failed to appear on the rescheduled date and the court proceeded with the *ex parte* hearing without her. In support of his request that the property be sold in lieu of partition, Mr. Dolet testified: (1) that he was asking that the Peachtree Lane property be sold by a trustee; (2) that he and Ms. Martin co-owned the property; (3) that the property was subject to the divorce agreement; (4) that he had transferred possession of the property to her contingent on her agreement to assume responsibility for the mortgage and other expenses and refinance it into her name; and (5) that she had initially made those payments, but stopped. Mr. Dolet also introduced into evidence a photograph of the single family residence on the property, to show that it could not be partitioned; a summary of the expenses he had paid on the property because Ms. Martin had not paid them; a statement of his attorney's fees; and a certified copy of the deed, which identifies Mr. Dolet and Ms. Martin as owning the property "as Joint Tenants."

After his evidentiary presentation, Mr. Dolet asked the court "to appoint a trustee for sale of the property," with any equity to be paid to Ms. Martin after subtraction of his expenses and attorney's fees. The court agreed and subsequently entered an order on March 10, 2017 appointing a trustee to sell the Peachtree Lane property. The order

[2] Counsel for Mr. Dolet told the court that Ms. Martin, who was present at the time, and Mr. Dolet were "requesting that there be a continuance of this hearing until sometime after December 31st so [Ms. Martin] may be able to attempt to refinance the property and hopefully avoid the cost and inconvenience of a trustee."

identifies that it was to be mailed to Ms. Martin at her correct address of 15906 Penn Manor Lane.

On July 6, 2017, nearly four months later, Ms. Martin, now represented by counsel, filed a "Motion to Stay of Judicial Sale and to Reinstate This Matter for a New Hearing and/or for Temporary Restra[in]ing Order and Preliminary and Permanent Injunctive Relief." In the motion, Ms. Martin (1) claimed that initial process on her was improper, (2) claimed that Mr. Dolet was in contempt of the divorce agreement by failing to deed the property to her upon vacating it, (3) asked the court to "exercise [] its revisory power under rule 2-535 . . . to reinstate this matter for a hearing under [Mr. Dolet's] original complaint" and under a separate motion that Ms. Martin had filed in the parties' divorce case, and (4) asked the court to restrain Mr. Dolet and the trustee from selling the property. The circuit court denied the motion and Ms. Martin appealed.

While this appeal was pending, the trustee proceeded to sell the property. The court subsequently ratified the sale after overruling Ms. Martin's exceptions and opposition. Ms. Martin's appeal from the court's order of ratification is pending.[3]

DISCUSSION

Ms. Martin challenges the circuit court's refusal to exercise its revisory power under Rule 2-535(b) to set aside its order to sell the property.[4] Under Rule 2-535, when a party

[3] It does not appear from the record or the docket that the circuit court has issued a ruling on Mr. Dolet's request for declaratory relief in Count I or that that claim has been dismissed. As a result, that aspect of this case may still be pending in the circuit court.

[4] Although Ms. Martin's motion in the circuit court also sought injunctive relief, she has abandoned that claim on appeal and now argues only that the court erred in not granting

files a motion to reconsider "more than thirty days after the judgment is entered, the grounds for setting aside the judgment are generally limited to instances of fraud, mistake or irregularity." *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 400 (2006). In reviewing a denial of a motion to reconsider on these grounds, "the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion." *Id.* at 400-01 (quoting *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997)). A trial court abuses its discretion when its decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons[,]" *Levitas v. Christian*, 454 Md. 233, 243 (2017) (quoting *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011)) (emphasis removed), or when it "acts without reference to any guiding rules or principles," *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). A trial court also abuses its discretion if it rules incorrectly on a "purely legal" issue. *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. at 475 n.5.

I. MS. MARTIN'S APPEAL IS PROPERLY BEFORE US.

Although the parties did not raise any issue concerning the appealability of the court's order in their briefs, we consider it here to satisfy our independent obligation to ensure that we have jurisdiction. *See Johnson v. Johnson*, 423 Md. 602, 605-06 (2011) ("[A]n order of a circuit court must be appealable in order to confer jurisdiction upon an

her motion under Rule 2-535(b). Ms. Martin has similarly abandoned her claim below of insufficient service of process.

appellate court, and this jurisdictional issue, if noticed by an appellate court, will be addressed *sua sponte*."); *Lee v. Lee*, ___ Md. App. ___, No. 1732, Sept. Term 2017, slip op. at 10 (Jan. 30, 2019).

Ms. Martin challenges an interlocutory order of the circuit court, which is ordinarily appealable only in three circumstances: "appeals from interlocutory orders specifically allowed by statute; immediate appeals permitted under Maryland Rule 2-602; and appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Salvagno v. Frew*, 388 Md. 605, 615 (2005). At oral argument, Ms. Martin contended that she has the right to appeal under § 12-303(3)(v) of the Courts and Judicial Proceedings Article, which provides that a party may appeal from an interlocutory order "[f]or the sale, conveyance, or delivery of real or personal property . . . or the refusal to rescind or discharge such an order . . . ."

Although couched in terms of a request for a stay or injunction,[5] the essence of the relief requested in Ms. Martin's motion, liberally read, was for rescission of the court's order to sell the Peachtree Lane property. As such, the court's order denying that relief is immediately appealable under the plain language of § 12-303(3)(v). *Accord Morgan v. Morgan*, 68 Md. App. 85, 91-92 (1986) (noting that an order "appointing [a] trustee to sell the property" though "technically interlocutory in the sense that it did not finally conclude

[5] If Ms. Martin's appeal challenged the denial of her motion for injunctive relief, it would be appealable under § 12-303(3)(iii) of the Courts and Judicial Proceedings Article. As noted, however, Ms. Martin does not argue on appeal that she was entitled to an injunction.

the proceeding, was immediately appealable under . . . § 12-303(3)(v)"); *Pollekoff v. Blumenthal*, 83 Md. App. 85, 92 (1990) (stating that although an order rescinding a ratification of a sale ordinarily is not appealable, it is appealable if it also directs return of a deposit and directs a resale of the property); *but see Balt. Home All., LLC v. Geesing*, 218 Md. App. 375, 383 n.5 (2014) (implying that an order authorizing resale of a property is not appealable unless it "terminate[s] the court's involvement in the sale of the Property").

II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING MS. MARTIN'S REVISORY MOTION.

A. The Circuit Court Did Not Abuse Its Discretion in Declining to Revise the Order to Sell on Grounds of Mistake.

Ms. Martin's first claim of error is that the court should have granted her revisory motion on the grounds of mistake because the court lacked subject matter jurisdiction over Mr. Dolet's claim. Rule 2-535(b) allows a court to "exercise revisory power and control over the judgment in case of . . . mistake . . . ." A mistake for purposes of this provision "refers only to a 'jurisdictional mistake.'" *Peay v. Barnett*, 236 Md. App. 306, 322 (2018) (quoting *Chapman v. Kamara*, 356 Md. 426, 436 (1999)).

Ms. Martin contends that the circuit court made a jurisdictional mistake in concluding that it had the power to order a sale in lieu of partition of the Peachtree Lane property because (1) concurrent ownership by the parties is a prerequisite to the court having jurisdiction to order a sale and (2) Mr. Dolet admitted in his complaint and in his testimony that he lacked any concurrent ownership interest in the property. We disagree

both with Ms. Martin's characterization of Mr. Dolet's complaint and testimony and with her contention that the court abused its discretion.

Mr. Dolet did not, at any point, acknowledge that he lacked a concurrent interest in the Peachtree Lane property. To the contrary, in his claim for sale in lieu of partition, Mr. Dolet's complaint asserts that "the parties hold title to 1709 Peachtree Lane as joint tenants with rights of survivorship." He acknowledged that he had vacated the property and he identified in his complaint the provision of the divorce agreement that obligated him to deed the property to Ms. Martin in that circumstance.[6] However, he also stated that he had not deeded the property to her, purportedly based on her breach of the parties' oral agreement that he would turn possession of the property over to Ms. Martin only on the condition that she agree to refinance the property in her sole name. As a result, he claims, he retained at least bare legal title to the property. Indeed, he attached to his complaint, and then introduced into evidence at the default hearing, a certified copy of the then-extant deed identifying him as a joint tenant.

Ms. Martin argues that because Mr. Dolet was required to deed the property to her upon vacating it, equitable title to the property resided entirely with her under the doctrine of equitable conversion. As a result, she argues, at the time he filed his complaint, Mr.

[6] Mr. Dolet's complaint quotes the relevant paragraph of the divorce agreement concerning the Peachtree Lane property and attaches a copy of the full agreement. The complaint also includes a statement of Ms. Martin's claim that "she is entitled to exclusive use and possession of 1709 Peachtree Lane without regard to [Mr. Dolet's] liability on the mortgage and further asserts that she is not obligated to reimburse [Mr. Dolet] for any amounts he paid to cure unpaid principal, interest, insurance and tax payments she failed to make since she took possession."

Dolet lacked any equitable interest and had only "naked legal title" to the property. Notably, however, § 14-107(a) of the Real Property Article provides that "[a] circuit court may decree a partition of any property, *either legal or equitable*, on the bill or petition of any joint tenant, tenant in common, parcener, or concurrent owner, whether claiming by descent or purchase." Real Prop. § 14-107(a) (emphasis added). To the extent a property is not susceptible to partition without injury, "the court may decree its sale and divide the money resulting from the sale among the parties according to their respective rights." *Id.*[7]

Construing the plain language of the statute in context, as we are required to do, *SVF Riva Annapolis LLC v. Gilroy*, 459 Md. 632, 640 (2018), it authorizes a partition, or a sale in lieu thereof, based on concurrent ownership of "legal or equitable" title in a property. Mr. Dolet's admission that he had turned *possession* of the property over to Ms. Martin thus did not constitute an acknowledgment that he lacked the necessary concurrent interest to provide the court with at least subject matter jurisdiction over the complaint for sale in lieu of partition.[8] To the contrary, he proved through evidence that he still maintained at least bare legal title to that property.

[7] Section 14-107(a) and its statutory predecessors codified the common law right to partition, historically an equitable remedy. *See Triantis v. Triantis*, 184 Md. App. 703, 712-13 (2009).

[8] We emphasize that the sole question in this appeal is whether the court was mistaken, for purposes of Rule 2-535(b), in concluding that it had *subject matter jurisdiction* to proceed to act on the complaint. We are not confronted with the merits of whether the court should have granted a petition for sale in lieu of partition in favor of a party who held only bare legal title to the property, if that in fact is all Mr. Dolet possessed. That is a different issue that Ms. Martin could have raised had she not failed to respond to

As to Ms. Martin's ultimate contention, we observe that the abuse of discretion standard is especially deferential in the context of the denial of a motion for reconsideration. The question on appeal is whether the trial court's decision "was *so far wrong*—to wit, *so egregiously wrong*—as to constitute a clear abuse of discretion." *Stuples v. Balt. City Police Dept.*, 119 Md. App. 221, 232 (1998). Indeed, "[i]t is hard to imagine a more deferential standard than" that applied to a trial judge's decision not to reconsider a judgment already rendered. *Estate of Vess*, 234 Md. App. 173, 205 (2017). "The nature of the error, the diligence of the parties, and all surrounding facts and circumstances are relevant" to the court's decision on whether to exercise its revisory powers. *Wormwood v. Batching Sys., Inc*., 124 Md. App. 695, 700 (1999). This Court "will not reverse" the denial of a motion to revise "unless there is a grave reason for doing so." *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 724 (2002).

Here, we perceive no such grave reason. At the time she filed her revisory motion, Ms. Martin had long been in default, she had failed to appear in court on a date she had participated in selecting, and she waited nearly four months after the court had ordered the sale of the property to belatedly ask for it to be halted. Moreover, although her motion argued that she should be considered the owner of the property, she did not contend that this presented a jurisdictional issue. We see no abuse of discretion in the trial judge's exercise of its nearly "boundless discretion not to indulge this all-too-natural desire to raise

the initial complaint and failed to timely appeal from the order to sell the property. We offer no opinion here on what the answer to that question would have been.

issues after the fact that could have been raised earlier but were not . . . ." *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002).

B. The Circuit Court Did Not Abuse Its Discretion in Declining to Revise the Order to Sell on Grounds of Irregularity.

Ms. Martin also argues that the circuit court erred "by granting Mr. Dolet's motion to appoint a trustee, which was made orally at a hearing noticed for the damages phase for default judgments . . . ." Rule 2-535(b) allows a court to "exercise revisory power and control over the judgment in case of . . . irregularity." Ms. Martin contends that the court's granting of Mr. Dolet's motion for appointment of a trustee to sell the property at the *ex parte* default hearing constituted an irregularity because Rule 2-311(a) requires that "[a]n application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought."

Ms. Martin's argument fails for four reasons. First, Ms. Martin did not raise this objection before the circuit court and has therefore failed to preserve it for our review. *See* Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ."). Second, Mr. Dolet did make his request for a sale in lieu of partition in writing when he sought that relief in Count II of his complaint. Count II is captioned "Sale in Lieu of Partition Pursuant to Real Property Article § 14-107" and expressly asks the court to either "[o]rder a partition of the Property . . . or if more equitable, the sale of the Property . . . ." Directing appointment of a trustee to carry out the sale was simply the necessary mechanism to carry out relief requested in the complaint, not a new request. Third, for the

same reason, appointment of a trustee to sell the property is an entirely appropriate step to take during "the damages phase for default judgments" when the default judgment was on a claim for sale in lieu of partition. That is how such a sale is accomplished.

Fourth, Rule 2-311 expressly provides that a motion "made during a hearing or trial" need not be in writing. Thus, even if Mr. Dolet's request at the hearing that the court "appoint a trustee for sale of the property" were not encompassed in the relief requested in writing in his complaint, it was properly made orally at the hearing. Although Ms. Martin complains that she was not present at the hearing, (1) that was her fault, not that of the court or Mr. Dolet, and (2) it could hardly have been a surprise that Mr. Dolet would request that the court appoint a trustee to sell the property at a default hearing on a complaint requesting a sale of the property. A defaulting party cannot preclude the court from taking the steps necessary to proceed to judgment by failing to appear at a default hearing. We therefore affirm.[9]

[9] This interlocutory appeal represents only one chapter of the parties' dispute over the Peachtree Lane property. In addition to the remainder of this action in the circuit court and now on appeal in this Court, Ms. Martin has also pursued a contempt finding against Mr. Dolet in the parties' divorce case and has filed a breach of contract action seeking damages. Our decision here is limited to the question of whether the circuit court abused its discretion in denying Ms. Martin's revisory motion under Rule 2-535(b). This opinion should not be interpreted as having addressed or decided the merits of either party's other claims relating to the divorce agreement and the Peachtree Lane property, including but not limited to who was responsible for the mortgage and other expenses once Mr. Dolet vacated the property, whether Mr. Dolet breached the divorce agreement or was in contempt of the divorce decree when he failed to deed the property to Ms. Martin upon vacating it, whether Ms. Martin breached any obligation to Mr. Dolet by failing to refinance the property, and whether either party owes damages to the other.

ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.