Circuit Court for Prince George's County
Case No. CAD20-14745

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1483

September Term, 2022

BOBBY VAN WILSON, II

Appellant

v.

ARIEL TRIPLETT WILSON

Appellee

Graeff,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: October 26, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This appeal arises from an order issued by the Circuit Court for Prince George's County granting Ariel Triplett Wilson, appellee, a Judgment of Absolute Divorce from Bobby Van Wilson, II, appellant. The court ordered that Ms. Wilson have primary physical custody of their minor child, A.W., that the parties have joint legal custody, with Ms. Wilson having tie-breaking authority on education and medical care, and that Mr. Wilson pay child support.[1]

On appeal, appellant presents two questions for this Court's review,[2] which we have rephrased slightly as follows:

1. Did Mr. Wilson and Ms. Wilson enter into an enforceable settlement agreement on issues of alimony, child custody, and property division when their agreement was placed on the record in open court?

2. Did the circuit court err by conducting a merits hearing on issues that were the subject of a settlement agreement?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

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[1] In the interest of privacy, we refer to the minor child by its initials, A.W.

[2] Mr. Wilson presented the following questions on appeal:

1. Did Plaintiff and Defendant enter into an enforceable settlement agreement on issues of alimony, custody, and property division when their mediated settlement agreement was memorialized on the record in open court?

2. Did the circuit court err by conducting a merits hearing on issues that were the subject of the settlement agreement entered into between Plaintiff and Defendant?

FACTUAL AND PROCEDURAL BACKGROUND

Mr. and Ms. Wilson were married in 2014. They owned a home in Upper Marlboro, Maryland (the "marital home"). A.W. was born in 2018.

On August 13, 2020, Ms. Wilson filed a complaint for limited divorce in the Circuit Court for Prince George's County, citing constructive desertion and excessively vicious conduct by Mr. Wilson. On December 28, 2020, Mr. Wilson filed his counter-complaint for limited divorce or absolute divorce, on the grounds of cruelty of treatment, constructive desertion, and adultery. Both parties stated that there was no expectation or probability of reconciliation.

I.

The April 1, 2021 Settlement Conference

On April 1, 2021, the circuit court held a settlement conference via Zoom. It noted that the parties had engaged in several days of negotiations to settle the case, which was scheduled for a limited divorce trial later that week. After preliminary discussions and clarification of terms previously agreed to by the parties, the court undertook to place the parties' agreement on the record.

Ms. Wilson testified that she and Mr. Wilson had reached a settlement agreement on all the legal issues arising from their marriage. Pursuant to the agreement, the parties would share time with A.W., with Ms. Wilson having A.W. for eight days, and Mr. Wilson having A.W. for six days, in any given 14-day period. Ms. Wilson would have primary

physical custody of A.W., subject to the access schedule agreed upon.[3] Ms. Wilson testified that, with respect to child support, she and Mr. Wilson would each have an obligation to support A.W. while the child was in their care. She agreed to waive any child support obligation owed to her by Mr. Wilson for a period of at least two years, at which time she could petition the court for a child support award that would not include retroactive support. She and Mr. Wilson, however, would continue to split day care costs. Ms. Wilson also agreed to waive alimony and any interest in Mr. Wilson's retirement accounts, noting that they each agreed to keep the accounts in their individual names. Ms. Wilson testified that she was seeking a divorce on the basis that she had entered into a legally binding settlement agreement that resolved each of the legal issues arising from her marriage to Mr. Wilson. She stated that she understood that she and Mr. Wilson would have to reduce their agreement to writing within 30 days of the hearing.

Mr. Wilson's attorney sought to clarify Ms. Wilson's testimony and the terms of the agreement. Counsel stated that Ms. Wilson's characterization of the custody agreement as "primary physical custody" was incorrect, and it should be termed "joint custody based on the custody arrangement that we had . . . ." The court explained to Mr. Wilson's attorney that the parties had agreed to "joint legal custody." Counsel for Mr. Wilson stated that the agreement was also joint physical custody. Mr. Wilson did not agree to primary residential

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[3] The record refers to a parenting agreement during mediation and emails concerning access. Those documents are not in the record on appeal.

custody with Ms. Wilson. Ms. Wilson then stated that they would not then be able to agree to a written document.

The court asked if Mr. Wilson wanted to continue with the proceeding, and when counsel responded in the affirmative, Mr. Wilson stated that he fully understood all the terms that Ms. Wilson's attorney had placed on the record, and the agreement put on the record by opposing counsel resolved all issues between the parties. He stated that he understood that he was waiving alimony as part of their agreement, and he waived any interest in Ms. Wilson's retirement accounts. On redirect, the parties testified that they each entered into the agreement voluntarily.

At the conclusion of their testimony, the circuit court placed its findings on the record. The court stated:

> I find then that the material allegations contained in the complaint for divorce under subsequent settlement agreed to the satisfaction of the Court. And accordingly, we will grant the parties an absolute divorce pursuant to that [agreement] and changing the name of the Plaintiff to her maiden name. I further enter an order that says that Plaintiff and Defendant's counsels shall prepare and submit to the court a consent order incorporating the agreement . . . signed by both parties and counsel and to do so within the next 30 days . . . from today, that would be [May 3, 2021].

The court advised the parties that they each were responsible for preparing the necessary consent order that would incorporate the parties' agreement.

II.

Failure to Agree on Consent Order

The parties were unable to reach an agreement on the language of the consent order. On September 9, 2021, Ms. Wilson filed a motion in the circuit court asking the court to

enter the consent order attached to the motion, which provided that Ms. Wilson had primary physical custody of the child, or in the alternative, set the case for a hearing. The motion stated that the parties were unable to reach agreement on language for the order for two reasons. First, although the record reflected that the parties agreed that Ms. Wilson had primary custody, Mr. Wilson insisted on using the term shared custody. Moreover, Ms. Wilson stated that she agreed to permit Mr. Wilson to remain in the family home for two years provided that he paid the mortgage and other fees, which he failed to do.

On September 20, 2021, Mr. Wilson filed a motion in opposition. He agreed that the parties were unable to reach agreement on the language for the consent order. He stated that the transcript from the April 21, 2021 settlement conference "clearly depicts" that the parties disagreed on the issue whether they had joint/shared custody or Ms. Wilson had sole physical custody, and the transcript "clearly show[ed] that the issue was not resolved by the Court." Mr. Wilson asked the court to enter an order setting forth the terms agreed to during the settlement conference, stating that the parties had joint physical and legal custody of the minor child.

The case was set for hearing on November 4, 2021.

III.

The November 4, 2021 Hearing

On November 4, 2021, the court held a hearing via zoom.[4] Counsel for Ms. Wilson stated that, on April 1, 2021, the parties had reached an agreement during a settlement status conference, and although that agreement was placed on the record, "counsel was never able to agree to the language of the terms of the order." Counsel had filed a motion to enter an order or set a hearing, but at the time of the hearing, Ms. Wilson's position was to go "forward on all of the issues, given that we were never able to reach agreement on the written order." Counsel for Ms. Wilson withdrew her request to enter an order based on an agreement because there was no agreement.

The court stated that the case was set for a two-day merits hearing. Counsel for Mr. Wilson stated that they had "no problem going forward on all the issues," but he thought the case was set to hear Ms. Wilson's motion to enter judgment, and he was not ready for a merits trial that day. Counsel agreed that "the parties weren't able to agree to two of [the] provisions," which led to Ms. Wilson filing a motion and Mr. Wilson filing a response. Counsel for Mr. Wilson stated that, "if the court feels that we can go back to [a] clean slate, then we could do that." The court recommended the parties start "from a clean slate" because the parties did not have "a meeting of the minds" during the settlement conference. Mr. Wilson's attorney did not object, and when the court asked what the parties wanted to

[4] The judge presiding over the November 4, 2021 hearing was different from the one who presided over the April 21, 2021 settlement conference.

do, Mr. Wilson's attorney said that his client was "going to clean slate." He further stated that they were willing to move forward, and "if we can't come to any stipulated decisions today, that's fine, too." When the court subsequently asked if the parties could come to an agreement on some or all of the issues, Mr. Wilson's attorney said that, "at this point, . . . we just need to reset [the] date and me and [Ms. Wilson's attorney] can talk and try to work things out . . . otherwise we'll just have a new trial date when we're ready to go forward."

The court stated that "there was no agreement in this case." It set a date for a limited divorce trial in March 2022.

IV.

Trial

The court held trial on the complaint for limited divorce on March 14, 15, April 27, and September 14, 2022.[5] Mr. Wilson appeared as an unrepresented litigant. Ms. Wilson asked for an award of primary custody, with access for Mr. Wilson on alternating weekends and a midweek dinner visit, as well as child support, and she requested joint legal custody, with tie-breaking authority. Counsel stated that the parties had been physically separated since June 5, 2021.

On March 14, 2022, the first day of trial, counsel for Ms. Wilson explained that, during the April 1, 2021 settlement conference, the parties reached an agreement on the

[5] The judge who presided over the trial was different from the ones who presided over the earlier proceedings.

record, but they subsequently were "unable to agree to the written language of the consent order."

The circuit court first heard testimony from Allison Simon. Ms. Simon operated a day care center and testified regarding A.W.'s attendance there. Ms. Simon testified as to the pick up and drop off schedule, as well as the interaction between A.W. and each of the child's parents.

Erin Simpkins Travers testified that Ms. Wilson was a dedicated mother who was always looking to do what was best for A.W. Ms. Wilson was the person she observed primarily caring for A.W. On cross-examination, Ms. Travers testified that she did not know Mr. Wilson very well.

Nedra Joyner, Ms. Wilson's mother, testified that she lived with Ms. Wilson and A.W. Ms. Wilson was the person she observed primarily caring for A.W. Based on her observations, Mr. Wilson was not engaged with A.W., and he often was "preoccupied with doing something else," like looking at his computer or watching television. She had observed Mr. Wilson drinking around A.W. Ms. Joyner testified, however, that there was nothing wrong with A.W. spending time with Mr. Wilson.

Ms. Wilson's attorney then called Mr. Wilson to testify. Mr. Wilson testified that Ms. Wilson moved out of their marital home on June 5, 2021. Since June 5, 2021, he had not paid any child support to Ms. Wilson.

On March 15, 2022, the trial continued. Ms. Wilson testified that she physically separated from Mr. Wilson on June 5, 2021. She testified to the general child custody

schedule on which she and Mr. Wilson had been operating. She believed, however, that the current custody arrangement was not in A.W.'s best interest. Ms. Wilson stated that A.W. was struggling to be away from her. She was crying a lot and having more tantrums. She explained the difficulty working with Mr. Wilson to make decisions regarding medical care and choosing a school for A.W.

On April 27, 2022, the third day of trial, Mr. Wilson asked to dismiss his counter complaint. Ms. Wilson consented, and the circuit court dismissed Mr. Wilson's counter complaint. Mr. Wilson called four witnesses, whose testimony the circuit court summarized as stating that Mr. Wilson "was a caring and attentive father."

Upon the conclusion of testimony by Mr. Wilson's witnesses, the court questioned whether one of the parties was going to file a complaint for absolute divorce on June 6, 2022, one year after the parties separated. After confirming with Ms. Wilson her intent to file for an absolute divorce immediately after June 5, 2022, the court scheduled a final hearing for September 14, 2022.

On September 14, 2022, the trial continued. Ms. Wilson's attorney informed the court that her client's amended complaint for an absolute divorce was served the previous week. The court began to explain to Mr. Wilson that he had fifteen days from service to file an answer, but Mr. Wilson requested that the divorce be expedited. The court agreed to expedite the process, subject to Mr. Wilson stating on the record that he wished to proceed. Mr. Wilson stated: "I support the request for absolute divorce and . . . I do want to be divorced today if that's possible, sir."

V.

Court Order

On November 17, 2022, the circuit court issued its order, awarding Ms. Wilson an absolute divorce. With respect to an agreement between the parties, the court stated:

> [Ms. Wilson] believed the Parties reached an agreement on custody, child support, and attorney's fees on or about April 1, 2021. When the alleged agreement was memorialized in writing, . . . [Mr. Wilson] refused to sign it. After filing to enforce the agreement, [Ms. Wilson] withdrew her Motion to Enforce the Agreement . . . . Notwithstanding these facts, [Mr. Wilson] repeatedly requested the Court to enforce the agreement under the terms he perceived as favorable to him.

The court then considered the requisite factors regarding custody. It awarded Ms. Wilson primary physical custody of the child, with an access schedule for Mr. Wilson, and it ordered that the parties have joint legal custody, with Ms. Wilson having tie-breaking authority on issues related to education and medical care. The court ordered Mr. Wilson to pay $1,359 in monthly child support, and $150 a month toward arrears of $38,052.

This appeal followed.

DISCUSSION

Mr. Wilson contends that the circuit court erred in conducting a trial when the parties had entered into a settlement agreement, and the final judgment contradicted that agreement. Specifically, he asserts that "the parties reached a settlement agreement of the primary issues arising from their divorce, namely child custody and child support." Mr. Wilson requests us to remand "with instructions to enforce the parties' settlement agreement."

Ms. Wilson contends that "the circuit court properly found that there was no agreement and did not err[] by conducting a merits hearing after finding, by consent of the parties, that there was no agreement." She further contends that Mr. Wilson did not object to the court's finding "that there was no agreement," and therefore, the issue is not preserved for appellate review. She asks that we affirm the decision of the circuit court.

We begin by addressing Ms. Wilson's contention that Mr. Wilson's claim is not preserved for review. Maryland Rule 8-131(a) provides that, "[o]rdinarily, an appellate court will not decide any . . . issue unless it plainly appears by the record to have been raised in or decided by the trial court." "[T]he application of the rule limiting the scope of appellate review to those issues and arguments raised in the court below 'is a matter of basic fairness to the trial court and to opposing counsel, as well as being fundamental to the proper administration of justice.'" *In re Kaleb K.*, 390 Md. 502, 513 (2006) (quoting *Medley v. State*, 52 Md. App. 225, 231 (1982)). *Accord Granados v. Nadel*, 220 Md. App. 482, 499 (2014) ("the appellate court is limited ordinarily to issues preserved by the parties").

Here, Mr. Wilson not only failed to object to proceeding to trial, he affirmatively stated that the parties could not reach an agreement, and he consented to a trial on the merits. Prior to the November 2021 hearing, Mr. Wilson filed a response to Ms. Wilson's motion for entry of a consent order giving her primary physical custody of the minor child. He stated that the transcript from the April 2021 hearing "clearly depict[ed]" the parties' disagreement regarding whether they had joint physical custody or Ms. Wilson had sole

physical custody. Mr. Wilson stated: "The transcript clearly shows that the issue was not resolved by the Court."

At the November, 2021 hearing, when the court noted the ambiguity in the record regarding an agreement, counsel for Mr. Wilson's stated that, the parties "were unable to reach agreement" on two terms in the consent order. He stated that the parties were not able to agree on two issues, and Mr. Wilson wanted to "move forward" with a "clean slate." The circuit court then set a trial for March 2022 for limited divorce, child custody, access, and support.

During the trial, the circuit court sought to clarify testimony from Mr. Wilson. The court asked Mr. Wilson if he understood "that whatever happened when you were in front of [the settlement hearing judge], that you and your wife did not execute an agreement, therefore, you have no agreement." Mr. Wilson's response: "Correct." Mr. Wilson later stated that the agreement between he and Ms. Wilson "was null and void."

Although Mr. Wilson repeatedly stated below that there had been no agreement between the parties, he now argues on appeal that the court should not have proceeded with a hearing because there was a binding settlement agreement. That contention is not properly before this Court.

"It is a firmly established principle of Maryland law . . . that a party may not obtain appellate review of a judgment to which the party consented." *Parker v. State*, 402 Md. 372, 405 (2007). The Supreme Court of Maryland has stated that, "[t]he 'right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from

which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal.'" *Suter v. Stuckey*, 402 Md. 211, 224 (2007) (quoting *Rocks v. Brosius*, 241 Md. 612, 630 (1966)). *See also State v. Rich*, 415 Md. 567, 575 (2010) ("[W]here a party invites the trial court to commit error, he cannot later cry foul on appeal.") (quoting *United States v. Brannan*, 562 F.3d 1300, 1306 (11th Cir. 2009)).

Because Mr. Wilson not only acquiesced to a hearing, he specifically stated that there was no agreement between he and Ms. Wilson, and he wanted to "move forward" and start with a "clean slate," he cannot now argue that the parties had an enforceable agreement. We decline to address the issue on the merits.

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