Circuit Court for Howard County
Case No. 13-C-16-107352

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1567

September Term, 2019

JOAN F. BRAULT

v.

CHRISTOPHER A. KOSMOWSKI

Kehoe,
Friedman,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: December 10, 2020

The parties, Joan Brault and Christopher Kosmowski, were married for almost 30 years but divorced and entered into a marital property agreement in 2017. This is Ms. Brault's second appeal from the divorce proceedings. In this appeal, Ms. Brault seeks review of: 1) our unreported decision affirming a contempt order against her by the Circuit Court for Howard County for failing to comply with the terms of the agreement, and 2) the circuit court's subsequent order granting a court-appointed trustee possession of their marital property. Ms. Brault raises several questions on appeal, which we have condensed and rephrased:

I. Is our previous unreported opinion reviewable under the law of the case doctrine?

II. If our opinion is reviewable, did we err in upholding the circuit court's contempt order because it: 1) contained procedural defects, and 2) illegally awarded damages and attorney fees to be paid from the proceeds of the sale of the marital property?

III. Did the circuit court err in awarding possession of the marital property to the court-appointed trustee and in not requiring the trustee to post bond?

We answer the above questions in the negative and shall affirm.

Background

Because Ms. Brault's first two arguments concern our previous opinion, we shall relate certain facts from it.

During Ms. Brault's and Mr. Kosmowski's marriage they owned a house in Laurel, Maryland. On March 21, 2017, the parties obtained a judgment for absolute divorce that incorporated but did not merge the parties' "Marital Property Settlement Agreement" ("the Agreement"). The Agreement, among other things, required Ms. Brault to refinance the

loans secured by the marital home or remove Mr. Kosmowski from liability on the loans within 12 months of the date of the divorce, and if she did not, the house was to be listed for sale. She was also to remove Mr. Kosmowski from liability on a joint credit card or pay off the balance due within six months of their divorce. The Agreement stated that should either party breach their obligations under the Agreement, the prevailing party shall receive costs and expenses, including attorneys' fees incurred in prosecuting the breach.

On July 24, 2018, about 16 months after the judgment of divorce was entered, Mr. Kosmowski filed a petition for contempt, alleging, among other things, that Ms. Brault failed to: 1) refinance the loan on their marital home within 12 months of their divorce or list the property for sale, despite repeated requests for her to do so, and 2) make a $987 payment on their joint credit card that he then paid. By way of relief, Mr. Kosmowski asked the court to appoint a trustee to list and sell the marital home; order Ms. Brault to reimburse his credit card payment; and order Ms. Brault to pay the attorney's fees he incurred in prosecuting the petition.

A hearing was held before a magistrate at which both parties testified. After taking evidence and hearing the parties' arguments, the magistrate recommended that: 1) Ms. Brault be held in contempt for her failure to make the credit card payment and to list the property for sale after she had been unable to refinance the loans; 2) she could purge her contempt by paying Mr. Kosmowski $987 from the proceeds of the sale of the marital home; 3) she pay Mr. Kosmowski's attorney's fees from the proceeds of the sale of the

home; and 4) the court appoint a trustee to sell the marital home, if it had not been listed for sale on or before October 30, 2018.

On March 18, 2019, the circuit court denied Ms. Brault's exceptions to the magistrate's recommendations, granted Mr. Kosmowski's motion to appoint a trustee to sell the marital home, and issued a contempt order adopting all four of the magistrate's recommendations. Ms. Brault appealed the circuit court's contempt order. She also filed a motion to stay enforcement of the court's order, which the court denied.

While her appeal of the contempt order was pending, the court-appointed trustee attempted to sell the marital home but encountered resistance from Ms. Brault. As a result, the trustee filed a motion asking the circuit court to order Ms. Brault to vacate the home and award possession of the property to the trustee. Following a hearing, the court issued an order granting the trustee's motion. Ms. Brault subsequently vacated the home, but she appealed the circuit court's order.

On March 3, 2020, we issued an unreported opinion in which we affirmed the circuit court's contempt order. *See Brault v. Kosmowski*, No. 2865, Sept. Term, 2018 (Md. App. Mar. 3, 2020), *cert. denied*, 469 Md 271 (2020) ("*Brault I*").

In the appeal before us, Ms. Brault asks us to revisit our unreported opinion upholding the circuit court's contempt order. She also seeks review of the circuit court's order granting the trustee possession of the property. Mr. Kosmowski declined to file a brief but instead filed a motion to dismiss Ms. Brault's appeal. In that motion he argued that we should decline to address any arguments regarding the contempt order because we

have already addressed the contempt order in our unreported opinion, and her arguments as to the circuit court's order granting the trustee possession of the marital home are moot because the home has been sold.[1]

Analysis

I. and II.

Ms. Brault argues that the law of the case doctrine permits us to review our earlier unreported decision upholding the circuit court's contempt order because our earlier decision contained legal errors that worked a manifest injustice to her. She is partly correct and partly incorrect. Because we find no clear legal error in our prior decision that would work a manifest injustice to her, the law of the case doctrine applies and bars us from revisiting our previous decision or considering arguments that she could have raised in the previous appeal but didn't. We explain.

A. The Law of the Case Doctrine

Under the law of the case doctrine, "'once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case.'" *Holloway v. State*, 232 Md. App. 272, 279 (2017) (quoting *Scott v. State*, 379 Md. 170, 183 (2004)). The doctrine is one of appellate

[1] Mr. Kosmowski states in his motion to dismiss the current appeal that, about two months after our unpublished opinion was filed, the trustee sold the marital home and filed an accounting and proposed distribution of proceeds of sale with the court. Ms. Brault filed a motion in opposition and/or exceptions to the trustee's accounting and proposed distribution of the home's proceeds. The matter was set for a hearing on October 14, 2020. The trustee is holding the proceeds from the sale of the marital home in escrow, pending the outcome of the hearing.

procedure. *Goldstein & Baron Chartered v. Chesley*, 375 Md. 244, 253 (2003) (internal quotations omitted). The doctrine prevents the revisiting of not only an issue properly raised on appeal but also issues "that could have been raised and decided . . . in a subsequent appeal." *Martello v. Blue Cross & Blue Shield of Maryland, Inc.*, 143 Md. App. 462, 474 (quotation marks, citation, and emphasis omitted), *cert. denied*, 369 Md. 660 (2002). *See Schisler v. State*, 177 Md. App. 731, 745 (2007) ("[U]nder the law of the case doctrine, litigants cannot raise new defenses once an appellate court has finally decided a case if these new defenses could have been raised based on the facts as they existed prior to the first appeal.") (citations omitted). The purpose of the law of the case doctrine "is to prevent piecemeal litigation." *Nace v. Miller*, 201 Md. App. 54, 68 (citation omitted), *cert. denied*, 424 Md. 56 (2011).

The doctrine, however, is not so rigid that it completely precludes an appellate court from reconsidering an issue it previously decided, and therefore, under some extremely limited circumstances, it will not be applied. *Goldstein*, 375 Md. at 253. The Court of Appeals in *Goldstein* explained:

> although an appellate decision certainly binds lower courts, the appellate court that rendered the decision is not precluded from reconsidering an issue it previously decided, even in the same case, when exceptional circumstances so warrant. The thrust of *Hawes* [*v. Liberty Homes*, 100 Md. App. 222, *cert. denied*, 336 Md. 300 (1994)] was that decisions rendered by a prior appellate panel of the Court of Special Appeals will generally govern in a second appeal "unless (1) the previous decision is patently inconsistent with controlling principles announced by a higher court and is therefore clearly incorrect, *and* (2) following the previous decision would create manifest injustice." *Hawes, supra*, 100 Md. App. at 231[.]

Id. Thus, the doctrine does not apply where the previous opinion was clearly, legally incorrect and creates a manifest injustice.

B. Clear legal error and manifest injustice?

Ms. Brault argues that our decision upholding the circuit court's contempt order was legally wrong and manifestly unjust in two respects.

Ms. Brault first argues that the contempt order was illegal because the show cause order and writ of summons both included a request for imprisonment, and the Petition for Contempt did "not contain a statement of *no* intent to seek imprisonment as required by Maryland Rule 15-206(c)(1)[.]" (emphasis added by Ms. Brault). She argues that these procedural defects made the contempt order illegal because it violated the it violated state and federal constitutional provisions that forbid, under certain circumstances, imprisonment for a debt.[2] She states in passing that we also erred in upholding the contempt order because the order illegally "adjusted" her "rights of property" and the circuit court had no authority to do so under Md. Code Ann., Family Law Art., § 8-200 et. seq.

Ms. Brault is attempting to relitigate claims that we have already decided or claims she could have raised in her first appeal. In our previous opinion, we determined that the

[2] As discussed in *Bault I*, the constitutional provision directly applicable to Ms. Brault's case is Article III, § 38 of the Maryland Constitution, which states:

> No person shall be imprisoned for debt, but a valid decree of a court of competent jurisdiction or agreement approved by decree of said court for the support of a spouse or dependent children, or for the support of an illegitimate child or children, or for alimony (either common law or as defined by statute), shall not constitute a debt within the meaning of this section.

circuit court did not abuse its discretion in holding her in contempt because she "never faced the prospect of imprisonment because of her failure to comply with the terms of the [marital] agreement." *Brault I*, 2020 WL 1034587 at *3. Nothing she has argued in this appeal persuades us that our prior decision was legally wrong and created a manifest injustice. Moreover, she could have raised her other argument in her first appeal but did not.[3] Therefore, the law of the case doctrine applies, foreclosing her request that we review our unreported decision upholding the circuit court's order finding her in contempt.

Ms. Brault also argues that we erred in upholding the circuit court's contempt order because it awarded damages and attorney's fees to Mr. Kosmowski out of the proceeds of the sale of the marital home. She argues that damages in a civil action cannot be awarded except in "exceptional circumstances," which are not present here; the purge provision illegally converted a monetary award into a disposition of real property award; and the purge provision illegally deprived her of the "opportunity to purge the finding of contempt by a means within her present ability."

Ms. Brault is again attempting to relitigate claims that we have already decided in her appeal of the contempt order or claims that she could have raised in that appeal. In our previous opinion, we addressed her exceptional circumstances argument and found it to be unpersuasive. As above, nothing she has put forth in this appeal persuades us that our

[3] To the extent that Ms. Brault implies that we did not address or misinterpreted the arguments she raised in her first appellate brief, she could have filed a motion for reconsideration of our appellate opinion, but she did not. *See* Md. Rule 8-605 (governing motions for reconsideration and providing that motions must be filed before issuance of the mandate or within 30 days after the filing of the opinion, whichever is earlier).

decision was legally wrong and created a manifest injustice. Accordingly, the law of the case doctrine applies and prevents her from re-litigating or raising new claims related to the circuit court's contempt order awarding damages and attorney's fees out of the proceeds of the sale of the marital home.

III.

Lastly, Ms. Brault seeks review of the circuit court's order granting the court-appointed trustee possession of the marital home. She puts forth several arguments of error by the circuit court. She argues the court was "without authority to grant use and possession of the property to the trustee under the terms of the Agreement," and she should have been allowed to pursue refinancing and to reside in the home while the home was listed. Citing Md. Rule 14-303, she argues that the court erred in not fashioning an order excusing or requiring the trustee to post bond. Because of the errors, she asks that we vacate and reverse the circuit court's order that required her to vacate the marital home and gave possession of the home to the trustee. However, these contentions are moot because the home has been sold. We decline to decide moot questions of law where the relief requested is impossible to grant. *See Silver v. Benson,* 227 Md. 553, 559 (1962) (appeals will be dismissed as moot "where the relief has become impossible, as where the property in question has been sold[.]") and *Beeman v. Dep't of Health & Mental Hygiene,* 107 Md. App. 122, 133 (1995) (holding that question appealed "is moot because, no matter how we would resolve the

question, it would be impossible for us to provide an effective legal remedy[.]"). For the foregoing reasons, we shall affirm.[4]

THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[4] Given our disposition of this appeal, we shall deny Mr. Kosmowski's motion to dismiss Ms. Brault's appeal.