

Circuit Court for Montgomery County
Case No. 11768

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1583

September Term, 2016

TOM THOMASIAN

v.

ESTATE OF SILVA THOMASIAN

Eyler, Deborah S.,
Leahy,
Friedman,

JJ.

Opinion by Leahy, J.

Filed: April 23, 2018

*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.

Tom Thomasian (“Tom”), the Appellant, appealed to this Court challenging three post-judgment decisions the Circuit Court for Montgomery County entered in favor of his ex-wife Silva Thomasian (“Silva”) following his petition to modify an award of indefinite alimony. Tom and Silva divorced in 1988 and, pursuant to a 1996 modification order, the court awarded Silva \$4,000 per month in indefinite alimony. In 2013, Tom filed a motion to modify the alimony award, asserting change of circumstances based on the fact that he lost his job due to his failing health. The court denied his motion and ordered him to pay the arrearage as well as attorneys’ fees. In the midst of the court’s four-day hearing on his motion, however, Tom transferred his ownership in his home into the Trust, causing Silva to file three post-judgment motions: (1) to set aside the transfer as a fraudulent conveyance; (2) to sequester the property as security for Tom’s future alimony payments; and (3) for an award of attorneys’ fees. The circuit court granted both motions relating to the property but granted only a portion of Silva’s request for attorneys’ fees. Tom appealed all three decisions.¹

While the appeal was pending, but prior to oral argument, Silva died on June 26,

¹ Tom stated his original questions as follows:

1. “Whether the trial court erred in setting aside the appellant’s transfer of his non-marital property home to a revocable trust in the order of June 6, 2016[.]”
2. “Whether the trial court erred in sequestering non-marital property indefinitely when all judgments outstanding have been sati[s]fied and the appellant is current on its alimoney [sic] obligations.”
3. “Whether the trial court erred in ordering attorney[’s] fees prospective in nature by the appellee to be paid in advance?”

2017. The parties notified this Court of her death on December 29, 2017, mere days before the oral argument scheduled for January 4, 2018. On January 12, 2018, this Court issued a show cause order, asking the parties, *inter alia*, why the appeal should not be dismissed as moot. Following the parties’ responses, we entered an order on February 7, 2018, dismissing as moot Tom’s appeal “with respect to the circuit court’s order setting aside appellant’s transfer of real property and the circuit court’s order sequestering that real property[.]” We ordered, however, that the appeal proceed on the issue of attorneys’ fees, but stayed the case to permit the substitution of the proper party for Silva. On March 22, 2018, Silva’s counsel notified this Court that the Estate of Silva Thomasian (the “Estate”) had been opened and we issued an order, *inter alia*, substituting the Estate as the Appellee and ordering that we shall consider the appeal without oral argument.

Having considered the parties’ briefing on the issue of attorneys’ fees, we hold that the circuit court did not abuse its discretion by awarding Silva a portion of her post-judgment attorneys’ fees.

BACKGROUND

In 1988, the Circuit Court for Montgomery County granted Tom and Silva an absolute divorce and ordered Tom to pay Silva monthly alimony. On June 15, 1990, the circuit court found Tom in contempt of court after finding him in arrears in the amount of \$19,811. It ordered him to pay \$71,000 as well as indefinite alimony and issued a writ of body attachment. Then, on May 22, 1996, in response to dueling motions to amend the amount of alimony, the court awarded Silva \$4,000 per month in indefinite alimony.

A. Tom’s Petition to Terminate Alimony

Seventeen years later, on October 2, 2013, Tom filed a petition to terminate or modify the court’s award of indefinite alimony based on a change in circumstances. In his petition, Tom explained that he was fired from his job at Providence Hospital effective July 1, 2013, and that at age 76, health conditions prevented him from resuming viable employment as a surgeon. Without his income as a surgeon, Tom argued, the “disparity rational” that once supported indefinite alimony was no longer plausible. He attached a financial statement that indicated he had total monthly expenses of \$28,249 but monthly income of only \$6,625.

On February 20, 2014, Silva filed her answer, asking the court to deny Tom’s petition. Two weeks later, on April 7, she filed a motion for contempt based on Tom’s decision to stop paying alimony as of January 2014. Her answer noted that alimony was her primary source of income. She also sought attorneys’ fees. Tom filed an opposition to Silva’s motion on April 30, 2014. He argued that Silva qualified for social security benefits and that she could obtain a reverse mortgage on her home.

The court held a hearing on Tom’s motion to terminate alimony and Silva’s motion for contempt over four days, July 30-31 and September 8-9, 2014. On September 5, amid the alimony-modification hearing, Tom transferred his ownership of real property, located at 9516 Fox Hollow Drive, Potomac, Maryland 20854 (the “Property”), into “The Thomasian Family Trust Living Revocable Trust,” of which Tom and his current wife, Monique Thomasian, are co-trustees.

On October 7, 2014, the circuit court adjudicated Tom to be in constructive civil

contempt for his failure to pay Silva’s monthly alimony awards. The court found Tom to be \$32,000 in arrears and ordered him to pay \$5,200 of that within 10 days to purge his contempt or the court would issue a body attachment for his incarceration for a period of 10 days. After deferring the issue of attorneys’ fees to a separate hearing, the court entered an order on November 3 granting Silva’s request for attorneys’ fees and ordered Tom to pay her \$62,499.

B. Silva’s Three Post-Judgment Motions

Silva filed three post-judgment motions relating to Tom’s failure to pay his arrearage. First, on April 6, 2015, Silva moved to set aside Tom’s transfer of Property into a trust. The petition alleged that Tom purchased the property in his own name on August 22, 1986, while they were still married, and the property has remained in his name solely throughout his second marriage. Silva alleged that the transfer was fraudulent and not for consideration and that, if not for this transfer, she would have been able to secure a lien against the property as collateral for the judgments against Tom. Tom responded that the transfer of the Property was completed prior to the circuit court judgment and not a product of fraud but was part of a bona fide estate planning strategy.

Second, on April 30, 2015, Silva moved for post-judgment and appellate attorneys’ fees. She asked the court to award the fees necessary to pay her attorneys “for their services to be rendered in an attempt to collect on the judgments entered against [Tom] and for the appeal filed by [Tom]” as she was unable to pay at the time of filing. Tom responded that the equities did not warrant an order of advanced attorneys’ fees, and that Silva could rent or sell the home she owned but did not live in pursuant to the initial property distribution

following the divorce. Further, given the court’s decision not to modify alimony, Tom argued that the parties’ monthly income, since his forced retirement, was substantially similar and did not justify an award of attorneys’ fees. Tom contended that an award of additional attorneys’ fees would present a hardship to him, requiring him to sell personal property or borrow funds to satisfy the court’s award.

Then, on July 24, 2015, Silva filed a motion for an order requiring that Tom post security for his monthly alimony obligation. In her motion, she indicated that, to that point—over eight months after the court’s entry of judgment and its subsequent denial of Tom’s motion for reconsideration—Tom had still not made any payment toward the judgment for \$62,499 in attorneys’ fees and had paid only the purge provision of \$5,200 toward the \$32,000 judgment against him for arrearage. Tom’s lack of payment toward these judgments plus his attempts to make himself insolvent (emptying his bank account and transferring his solely-owned property to a trust) justified requiring Tom to post a security, Silva argued. Tom opposed the motion, arguing that he was continuing to pay Silva \$4,000 per month in alimony and was contesting the circuit court’s judgment in “a legitimate good faith appeal.” Further, he contended that the Property could not serve as security because its transfer required his wife’s signature, as co-trustee, and she was not a party to the underlying lawsuit.

1. Circuit Court’s Hearing

On November 3, 2015, two days before a hearing on Silva’s post-judgment motions, Tom filed with the court a notice that he paid the two outstanding judgments accompanied by a copy of two cashier checks and a demand that Silva enter a line of satisfaction. Two

days later, on November 5, just prior to the court’s hearing on the post-judgment motions, Silva entered a line of satisfaction for both judgments, noting that they were fulfilled with interest.

After opening arguments, Silva entered into evidence numerous exhibits, including records for all of Tom’s bank accounts that she could find, to demonstrate Tom had no money in his bank accounts and no other property of value other than the Property. Then, to avoid putting Tom on the stand, his counsel asked the court to accept testimony from the hearing on October 21, 2014, and proffered that Tom’s income remains at \$5,200 per month, his alimony has been current since the court’s October 30 order, and he had satisfied the two outstanding judgments against him. Silva testified that she received a check for Tom’s arrears and that she has continued to incur attorneys’ fees relating to this action after the circuit court’s October 30 order. Silva then entered into evidence the records of the \$24,000 fees she incurred (1) preparing the post-judgment motions; (2) attempting to collect the judgments against Tom; and (3) addressing Tom’s appeal of the October 30 order. Tom objected to paying additional attorneys’ fees, arguing that given the underlying dispute was for only \$32,000, any fees over the \$68,000 awarded previously would be excessive and shock the conscience.

The court then continued the hearing so that Tom could procure the transcripts from the September 25 hearing. Proceedings resumed on December 18, 2015. The parties’ arguments focused mainly on the Property-related issues. As to the attorneys’ fees, Silva explained that she had, to that point, incurred \$1,608.75 in fees attempting to collect judgments from Tom, \$6,317.50 defending his appeal of the judgments, and \$11,927.50 on

the post-judgment litigation. The fees were so high, her counsel explained, because Tom did not pay his arrears in a timely fashion and because he failed to disclose all his bank accounts and real estate, so Silva’s counsel had to search for them.

2. Circuit Court’s Post-Judgment Order

The circuit court ruled on Silva’s post-judgment issues in an opinion and order entered on June 6, 2016. The court found that there was no evidence that Tom received consideration for the transfer. Because Tom conveyed the Property without consideration and the conveyance left him insolvent, the court found that the conveyance was fraudulent as a matter of law under the Maryland Uniform Fraudulent Conveyance Act, Maryland Code (1975, 2013 Repl. Vol., 2017 Supp.), Commercial Law Article (“CL”), § 15-204. The court went on to hold that “Maryland’s Commercial Law Article clearly and definitively supports a decision to set aside the conveyance in this matter[,]” and opted to defer to Silva’s choice of remedy: “set[ting] aside the conveyance to the extent necessary to allow [Silva] to continue to collect her monthly award of alimony from [Tom].”

With respect to Silva’s motion for additional attorneys’ fees, the court denied her request for appellate attorneys’ fees, reasoning that Tom “was justified in pursuing his good faith appeal[.]” But the court did find good cause to award Silva reasonable post-judgment attorneys’ fees given Tom’s failure to pay anything toward the previous \$62,499 fees award and that “his history of non-payment and contempt as to alimony was the reason for this most recent post-judgment action[.]” Accordingly, the court set aside the transfer of the Property to allow Silva to satisfy her alimony claims against Tom and awarded Silva \$11,927.50 in post-judgment attorneys’ fees.

Later that month, on June 30, 2016, the court ruled on Silva’s motion to sequester the Property as security. It ordered Tom to remove his residence from the revocable trust and ordered that the court shall sequester the Property “to serve as security for the payment of alimony[.]”

3. Tom’s Motion to Reconsider

Tom filed a motion to reconsider the circuit court’s June 6 order setting aside his transfer of the Property and awarding post-judgment attorneys’ fees to Silva. Silva opposed the motion, averring that Tom did not “set forth any reason whatsoever why the Court should reconsider its Order[.]” She also asked the court to award her the filing fees that she incurred opposing Tom’s motion to reconsider, stating that she did not have the ability to pay them herself. On August 5, 2016, the circuit court denied Tom’s motion to reconsider and awarded Silva an additional \$1,218.75 in attorneys’ fees incurred opposing the motion.

Following the court’s denial of his motion to reconsider, Tom noted his timely appeal to this Court on September 2, 2016.

DISCUSSION

I.

Because Silva’s death mooted the Property and alimony issues, the only issue remaining on appeal is the propriety of the circuit court’s award of post-judgment attorneys’ fees. Tom argues that the court erred in awarding Silva attorneys’ fees because the economic disparity that existed previously no longer existed between the parties as he was no longer able to work. Tom also contends that the circuit court failed to make findings

to justify the award and that the court abused its discretion because the award is “excessive and shock[s] the sense of fairness.”

The Estate responds that Maryland Code (1999, 2012 Repl. Vol., 2017 Supp.), Family Law Article (“FL”) § 11-110 permits the circuit court to award reasonable and necessary expenses—including attorneys’ fees—to parties to an action concerning alimony. The circuit court’s award was not erroneous, the Estate suggests, because the court found rightly that Tom’s history of non-payment and his most recent non-payments were the reasons for Silva’s post-judgment actions, the cost of which the court awarded. The Estate concludes by observing that Tom could have avoided the court’s award of post-judgment attorneys’ fees by simply paying the money owed to Silva under the judgments against him.

FL § 11-110(b) provides that a court in a proceeding to enforce an award of alimony “may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.” The statute requires the court to consider “the financial resources and financial needs of both parties” and “whether there was substantial justification for prosecuting or defending the proceeding.” FL § 11-110(c). We review the circuit court’s award for attorneys’ fees for abuse of discretion. *Brown v. Brown*, 195 Md. App. 72, 122-23 (2010). Thus, we will leave the circuit court’s decision to award attorneys’ fees intact unless it exercised its discretion “arbitrarily or the judgment was clearly wrong.” *Petrini v. Petrini*, 336 Md. 453, 468 (1994).

The circuit court below found good cause to award Silva attorneys’ fees for her post-judgment motions and efforts to collect the outstanding judgments against Tom. It found

his year-long delay in paying Silva the \$62,499 he owed her to be “concerning[.]” and found Silva’s post-judgment actions to be reasonable and a result of Tom’s “history of non-payment and contempt as to alimony[.]” The circuit court also noted during oral argument that Silva relied entirely on alimony to survive and expressed concern that Tom’s failure to pay the arrearage left Silva without her income for 20 months. Given that the circuit court made findings, supported by the record, as to both “the financial resources and financial needs of both parties” and “whether there was substantial justification for prosecuting or defending the proceeding[.]” FL § 11-110(c), we cannot say that it abused its discretion by awarding Silva \$11,927.50 of the \$17,390.38 she sought in attorneys’ fees.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**