

Circuit Court for Prince George's County
Case No. CAL-16-23379

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1810

September Term, 2017

JOHNNY MENSAH

v.

CARMEN GARCIA, *ET AL.*

Kehoe,
Leahy,
Reed,

JJ.

Opinion by Kehoe, J.

Filed: January 14, 2019

*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. *See* Md. Rule 1-104.

Johnny Mensah appeals from a judgment of the Circuit Court for Prince George's County in favor of Carmen E. Garcia, her daughter Jessica Garcia, and Garcia's Investments, Inc. (To avoid confusion and redundancy, we will sometimes refer to Carmen Garcia as "Carmen" and Jessica Garcia as "Jessica.") Mr. Mensah raises two issues, which we have reworded slightly:

1. Whether the Memorandum, Opinion and Order entered by the trial court constituted a proper declaratory judgment, as it failed to declare the rights of the parties in a separate document?
2. Whether the trial court was clearly erroneous in finding that the beauty salon at issue between the parties was owned by Carmen and not Jessica and Peter Maryland, Inc.?

Mensah's first contention highlights an error in the way that the trial court disposed of the parties' claims. Under the circumstances of this case, the problem does not require dismissal of Mensah's appeal, but the trial court should enter a supplemental order explaining its declaratory relief. The answer to the second question is "no." We will affirm the judgment, but remand the case for further proceedings.

Background

On October 23, 2012, Carmen entered into a written contract to sell a business called Carmen's Beauty Salon to Mensah and his business partner for a purchase price of \$50,000. The contract called for payment to be made by a \$10,000 non-refundable down payment, \$15,000 to be paid on December 15, 2012, followed by five monthly installment

payments of \$5,000. Mensah¹ took possession of the salon in November 2012, and made the first two payments (totaling \$25,000) but failed to make any additional payments. In June, 2014, Carmen, Mensah and Mensah's spouse signed a document entitled "Payment Agreement" by which the latter undertook to pay the remaining balance at the rate of \$625 per month for 49 months. Although Mensah was unable to stay current on those payments either, he continued to operate the salon. In June, 2015, Carmen declared the contract to be in default and repossessed the premises without recourse to judicial process. Later, she sold the business to a third party.

In 2016, Mensah filed a civil action against Carmen, Jessica, and Garcia's Investments, Inc. (Garcia's Investments owned the building in which the salon was located.) The complaint asserted claims for misrepresentation, deceit, breach of contract, and conversion against the defendants arising out of the events described in the previous paragraph. Mensah later filed an amended complaint. Pertinent to the issues raised on appeal, he added allegations that, prior to the signing of the contract of sale, Carmen represented to him that she owned the beauty salon but that, in fact, the salon was owned by a corporation called Jessica and Peter Maryland, Inc. ("Jessica and Peter Inc."), and that this corporation was never a party to the contract of sale. In addition to the misrepresentation, fraud, breach of

¹ The trial court found that Mensah's erstwhile partner "was not interested in having any ownership involvement in Carmen's Beauty Salon [and that Mensah] assumed all ownership rights and responsibilities."

contract and conversion claims, Mensah also sought a declaratory judgment as to: (1) the validity and enforceability of the contract of sale, (2) the scope, if any, of Carmen's and Jessica's authority to enter into the contract and to transfer title to the salon, and (3) the rights and interests of the parties as to the salon. Mensah did not join Jessica and Peter, Inc. as a party.

The case was tried before the court based on Mensah's amended complaint. After a two-day trial, the trial court entered a judgment denying relief to Mensah on the misrepresentation, fraud, breach of contract, and conversion claims. As to the request for declaratory relief, the court determined that: (1) the contract of sale was valid and enforceable; (2) ownership and possession of the salon had been delivered to Mensah at closing; (3) Mensah breached the contract by failing to make all of the required payments; and (4) Carmen repossessed the salon by a valid exercise of self-help after the breach. The circuit court made its decision by means of a twelve-page memorandum, opinion, and order. The court and the parties evidently operated under the assumption that the memorandum, opinion, and order constituted a final judgment and Mensah filed a notice of appeal within thirty days of entry of the court's written opinion.

Analysis

1. The trial court failed to enter judgment in conformity with the requirements of Md. Rule 2-601(a) but the court’s oversight does not mandate dismissal of Mensah’s appeal.

Mensah’s first argument is that the trial court’s grant of declaratory relief was flawed because it was not rendered in a document separate from the memorandum, opinion, and order. He asks us to vacate the declaratory judgment and to remand the case to the trial court for entry of a properly documented and substantively different declaratory judgment. Mensah’s argument exposes a problem with the trial court’s documentation of its judgment. Because the memorandum, opinion, and order did not comply with the requirements of Md. Rule 2-601(a) for an entry of judgment, there is no final judgment. Usually, the appropriate action in such cases is for the appellate court to dismiss the appeal and remand the case to the trial court with instructions to enter judgment in compliance with Rule 2-601(a). But such a draconian approach is not required in this case because the trial court’s error was one of form, not substance, and did not prejudice the rights of either party. We will first explain the problem, and then the workaround.

Subject to exceptions that are not relevant to this case, parties may appeal only from a “final judgment” entered by a circuit court. *See* Md. Code, Courts and Judicial Proceedings Article § 12-301; *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 65 (2017); *Waterkeeper Alliance, Inc. v. Maryland Dept. of Agriculture*, 439 Md. 262, 278 (2014). In *URS Corp.*, the Court of Appeals explained (emphasis added):

Under our rules and case law, a final judgment exists only when the trial court intends an unqualified, final disposition of the matter of the controversy that completely adjudicates all claims against all parties in the suit, and only when the trial court has followed *certain procedural steps* when entering a judgment in the record.

* * *

One of the procedural steps for entry of final judgment—the “*separate document requirement*”—requires the trial court to memorialize the judgment in a separate document that is signed by either the court clerk or the judge and entered in the docket. Rule 2–601(a) and (b). . . . The separate document requirement is designed to eliminate confusion about what is the “entry of the judgment” from which the deadline [for filing a notice of appeal] is computed

452 Md. at 278 (footnotes, citations and quotation marks omitted).

Repeated decisions of the Court of Appeals have made it clear that entry of judgment by means of a separate document is mandatory. *See, e.g., URS Corp.*, 452 Md. 66; *Hiob v. Progressive Insurance Co.*, 440 Md. 466, 477 (2014); *Suburban Hospital, Inc. v. Kirson*, 362 Md. 140, (2000); *see also* Kevin F. Arthur FINALITY OF JUDGMENTS AND OTHER APPELLATE TRIGGER ISSUES (3rd Ed. 2018) 9–12 (collecting cases). In order to comply with the separate documents requirement, the court must state its judgment in a document that is “separate from an oral ruling of the judge, a docket entry, or a memorandum.” *Hiob*, 440 Md. at 478 (footnote omitted).

In the present case, the trial court’s judgment was included as part of the trial court’s 12-page-long memorandum, opinion and order, which includes the court’s findings, as well as the judgments entered by the court. This does not comply with the requirements of Rule 2-601(a), which, as we have explained, requires the court to enter judgment by separate

order, although that order may refer to the court’s memorandum.² Because there is not a separate document setting out the court’s judgment, there is no final judgment in this case.

As a general rule, appellate courts dismiss premature appeals. However, dismissal of an appeal for failure to comply with the separate document requirement is not required when the oversight is purely technical—as was the case in this appeal—and no party objects “to the absence of a separate document after the appeal is noted.” *URS Corp.*, 452

² The trial court would have complied with the separate document requirement had it entered an order that contained the following substantive provisions:

Ordered, that for the reasons explained in the Court’s Memorandum Opinion filed immediately prior hereto, judgment is entered in favor of defendants Carmen E. Garcia, Jessica Garcia, and Garcia Investments, Inc. and against plaintiff Johnny Mensah as to Counts I and II (Intentional Misrepresentation); Count III (Deceit); Count IV (Breach of Contract), and Count V (Conversion), and it is, further,

Ordered, that as to Count VI (Declaratory Judgment), the Court finds and declares:

- (1) The October 23, 2012 Purchase Agreement was a valid sales agreement between Carmen E. Garcia and Johnny Mensah for Carmen’s Beauty Salon.
- (2) Pursuant to said contract, Carmen E. Garcia received \$25,000 and Johnny Mensah received the ownership of and took control of Carmen’s Beauty Salon.
- (3) Johnny Mensah breached the parties’ Purchase Agreement and their Payment Agreement dated June 19, 2014 because he failed to make installment payments as required by those agreements.
- (4) The breach was a material one and Carmen Garcia lawfully repossessed Carmen’s Beauty Salon through “self-help.”

Md. at 68 (citing *Bankers Trust Co. v. Mallis*, 435 U.S. 381 (1978), and *Suburban Hospital, Inc. v. Kirson*, 362 Md. 140 (2000)).

Mensah argues that the declaratory judgment should have been set out in a document separate from the memorandum, opinion, and order. This is not the same thing as contending that the memorandum, opinion, and order itself fails to comply with the single document requirement. Therefore, we will treat the defect in the court’s judgment as waived and address the merits of Mensah’s appeal.

Mensah is correct that it has long been the law of Maryland that parties to declaratory judgment actions have the right to a written judicial declaration “defining the rights of the parties under the issues made.” *Case v. Comptroller*, 219 Md. 282, 288 (1959); *see also Harford Mutual Insurance Co. v. Woodfin Equities Corp.*, 344 Md. 399, 414 (1997). For many years, the separate document requirement was unique to declaratory judgment actions. However, in 1991, the Court of Appeals amended Md. Rule 2-601(a) to impose the separate document requirement for all civil judgments. As a result, the requirement that declaratory judgments be in writing was subsumed into the general requirement that all civil judgments must be set out in a separate document. *See Allstate Insurance Co. v. State Farm Mutual Auto. Ins. Co.*, 363 Md. 106, 117 n.1 (2001).

However, a trial court’s “failure to enter a proper declaratory judgment is not a jurisdictional defect . . . and an appellate court, ‘in its discretion, may review the merits of the controversy and remand for entry of an appropriate declaratory judgment by the circuit

court.” *Griffith Energy Services v. Natational Union Fire Insurance Company*, 224 Md. App. 252, 271-72 (2015) (quoting *Bontempo v. Lare*, 444 Md. 344, 379 (2015)). We will do so in this case because the problem here is one of form and, although the matter of form is absolutely mandatory, the substance of the trial court’s analysis of the parties’ rights is clear. As in *Bontempo*, the circuit court “will be able to cure this defect by entering a brief declaratory judgment.” 444 Md. at 379 (footnote omitted).

2. The trial court’s finding that Carmen Garcia was the owner of the beauty salon was not clearly erroneous.

We review for clear error Mensah’s contentions concerning the trial court’s finding as to the ownership of the beauty salon. *See* Md. Rule 8-131(c). In this exercise:

The appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court’s determination, it is not clearly erroneous and cannot be disturbed. The trial court is not only the judge of a witness’ credibility, but is also the judge of the weight to be attached to the evidence. It is thus plain that the appellate court should not substitute its judgment for that of the trial court on its findings of fact but will only determine whether those findings are clearly erroneous in light of the total evidence.

Ryan v. Thurston, 276 Md. 390, 392 (1975) (quotation marks and citations omitted).

In his brief, Mensah asserts that the trial court’s finding that Carmen Garcia owned the beauty salon was clearly erroneous. This argument is premised in large part on the fact that the 2012 personal property tax return of Jessica and Peter, Inc. was admitted into evidence and that the return indicated that the corporation was the owner of the salon in 2012, the year in which the contract of sale of executed. Moreover, Mensah points to the testimony

of Carmen Garcia. Although her testimony was not entirely consistent, at one point she did state that the salon was owned by Jessica and Peter, Inc., and that the corporation was not a party to the contract of sale.

Mensah makes a valid point in that a finder of fact *could* infer from the corporate tax return and the above-referenced part of Ms. Garcia's testimony that Jessica and Peter, Inc. in fact owned and operated the beauty salon in 2012. However, Mensah conflates the concepts of the burden of production and the burden of persuasion.

In order to satisfy his burden of *production*, Mensah needed to present legally sufficient evidence in support of his contention that Jessica and Peter, Inc., and not Carmen, owned the salon. He did so. But, in order to prevail on this issue, Mensah also needed to satisfy the burden of *persuasion*, that is, to persuade the court that, in light of *all* of the evidence, and not simply his evidence, the corporation owned the salon. This Court described the phenomenon of failure to persuade in *Starke v. Starke*, 134 Md. App. 663, 680 (2000):

Actually, to be persuaded of something requires a requisite degree of certainty on the part of the fact finder (the use of a particular burden of persuasion) based on legally adequate evidentiary support (the satisfaction of a particular burden of production by the proponent). There are with reasonable frequency reversible errors in those regards. Mere non-persuasion, on the other hand, requires nothing but a state of honest doubt.

In its opinion, the trial court recognized that there was conflicting evidence as to who held formal legal title to the salon. The court explicitly stated that it was not persuaded that Jessica and Peter, Inc. held title because that entity had allowed its registration of the

tradename “Carmen’s Beauty Salon” to lapse in 2008. The court also pointed out that, whenever Mensah made an installment payment on the purchase price, the money was paid to Carmen. From this, the court concluded that Carmen, and not Peter and Jessica, Inc., owned the salon because Carmen signed the purchase agreement as seller, conveyed the property to Mensah, and reacquired title by self-help after Mensah defaulted on the sales agreement. All of these actions were consistent with the notion that Carmen owned the salon. To be sure, reasonable minds viewing the evidence could have reached a different result, but what is dispositive is that the court’s conclusion that Carmen was the owner was supported by evidence in the record.

Moreover, any suppositional error as to legal title was harmless. The trial court also found, as a matter of fact, that Carmen “either had the actual authorization to sell the Beauty Salon or her actions were subsequently ratified by [Jessica and Peter, Inc.] by its acquiescence to [Mensah’s] assuming ownership and control.” On appeal, Mensah does not challenge these findings; and, in any event, there was substantial evidence before the court to support both of them. Consistent with these findings, the trial court also found that Carmen Garcia “did not breach the Purchase Agreement as she tendered the business as contemplated by the agreement of the parties.” Further, the court found that Mensah took possession and control of the salon after signing the purchase agreement and paying \$25,000 to Carmen. The court found that Carmen “asserted her ownership of Carmen’s Beauty Shop *before* the execution of the Purchase agreement and *after* [Mensah] failed to

make [the required] monthly payments. (Emphasis added.) There was evidence to support each of the court’s findings.

An Maryland appellate court will reverse a civil judgment only when the appellant demonstrates error *and* prejudice. *See Shealer v. Straka*, 459 Md. 68, 102-03 (2018), *reconsideration denied* (June 19, 2018); *Barksdale v. Wilkowsky*, 419 Md. 649, 657-58 (2011). Prejudice occurs when the trial court’s error changes the outcome of the trial. *See CSX Transp., Inc. v. Bickerstaff*, 187 Md. App. 187, 216-17 (2009). Because the trial court’s findings as to ratification, performance, and breach offer an independent basis for the trial court’s judgment, any hypothetical error on the trial court’s part as to legal title was harmless.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED AND THIS CASE IS REMANDED TO THAT COURT FOR ENTRY OF A SUPPLEMENTAL ORDER SETTING OUT THE DECLARATORY RELIEF GRANTED BY THE COURT. COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.