UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0099

September Term, 2015

LINDA SUE ZEIGLER

v.

LARRY EUGENE ZEIGLER, JR.

Woodward,
Kehoe,
Leahy,
JJ.

Opinion by Kehoe, J.

Filed: January 27, 2016

Linda Sue Zeigler appeals from a judgment of the Circuit Court for Baltimore County, granting Larry Eugene Zeigler, Jr.'s complaint for absolute divorce. Ms. Zeigler raises two issues on appeal:

> 1. Did the circuit court err in granting Mr. Zeigler's petition for absolute divorce on the ground of 12-month separation when the separation was initiated by a protective order?
>
> 2. Did the circuit court err in granting Mr. Zeigler's petition for absolute divorce when his corroborating witness did not have actual knowledge of the parties' 12-month separation?

Ms. Zeigler's appeal is premature because the judgment of absolute divorce is not a final judgment. Accordingly, we must dismiss the appeal.

Background

After 15 years of marriage, Ms. Zeigler filed a complaint for absolute divorce on February 7, 2014, alleging excessively cruel and vicious conduct on Mr. Zeigler's part. Mr. Zeigler filed a counter complaint for absolute divorce on February 5, 2015, seeking a divorce on the ground that the parties had "lived separate and apart, without cohabitation and without interruption" for more than 12 months.

In response, Ms. Zeigler filed a motion to dismiss the counter complaint on the ground that the parties were not living separately voluntarily but rather as the result of a domestic violence protective order issued against Mr. Zeigler. She asserted that Family Law Article ("FL") § 7-103.1(b) prohibits a court from considering compliance with a protective order as a ground for divorce. Mr. Zeigler then filed a motion in opposition to Ms. Zeigler's motion to dismiss, asserting that the basis for his complaint was not that the

separation was voluntary. Rather, Mr. Zeigler explained that he was seeking a divorce on the ground that the parties had been separated for more than one year, as prescribed by FL § 7-103(a)(4).

The case was called for trial on March 9, 2015. Before addressing the merits of the divorce action, the court heard argument on Ms. Zeigler's motion to dismiss the counter complaint. After hearing from counsel, the circuit court denied the motion, stating:

> I believe that if the legislature had intended to except from a twelve months, it's not a voluntary ground, it's just twelve month separation, if the legislature had intended to except that ground for divorce from a party, that was a party to a Protective Order, that they specifically would have indicated that in [FL §] 7-103.1, that you couldn't seek a ground on twelve months' separation until after the Protective Order had expired. There's nothing in this statute to indicate that [FL §] 7-103(a)(4) is a no fault ground . . . .

At this point, Ms. Zeigler's counsel indicated that he was unwilling to proceed to trial on the merits of his client's action because the parties had not conducted discovery regarding his client's alimony claim.

Trial proceeded on Mr. Zeigler's counter complaint. The court heard testimony from Mr. Zeigler that the parties were married, that they had acquired certain real and personal property during their marriage and his estimates as to the value of that property, and that the parties had separated on November 12, 2013, after a protective order was issued, and lived separate and apart without cohabitation since that date. Mr. Zeigler's testimony was corroborated by the testimony of his father.

Thereafter, the court presented its findings in open court. The court granted Mr. Zeigler's complaint for divorce, and appointed a trustee to sell the parties' real property located in the State of Maryland and directed that the net proceeds of the sale be divided equally. On the issue of alimony, the court stated: "I am going to sign an Order reserving on the issue of alimony and scheduling a future hearing date on the issue of alimony. The parties will be able to conduct discovery on the issue of alimony." The court entered a judgment of absolute divorce consistent with its findings on March 19, 2015, and explicitly reserved the alimony issue.

Before a hearing could be held on the issue of alimony, Ms. Zeigler filed this appeal.

Analysis

I.

Subject to certain narrow exceptions, none of which are applicable in this case, the jurisdiction of Maryland's appellate courts is limited to the review of "final judgments." A final judgment is one which disposes of all of the claims between the parties. *Nnoli v. Nnoli*, 389 Md. 315, 323–24 (2005). Was the trial court's judgment of March 19, 2015, a "final judgment"? The answer to this question is "no."

Md. Rule 2-602(a) states in pertinent part:

> [A]n order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim[:]

> (1) is not a final judgment;
> (2) does not terminate the action as to any of the claims or any of the parties; and
> (3) is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties.

The circuit court's judgment granting Mr. Zeigler a divorce was not a final judgment. It did not adjudicate all of the claims between the parties because the court expressly reserved judgment on Ms. Zeigler's claim for alimony. For the same reason, the judgment did not, nor was it intended to, terminate the parties' divorce action. Finally, because it was not a final judgment, it was subject to revision by the trial court at any time before the entry of final judgment.

Without jurisdiction, we have no authority to review the action by the trial court. We have no choice but to dismiss Ms. Zeigler's appeal. Even so, we think some brief additional commentary might be helpful.

II.

Were we to consider Ms. Zeigler's contentions on their merits, we would conclude that the court did not commit reversible error.

Ms. Zeigler's first contention is that the court erred in granting Mr. Zeigler's petition for divorce, pursuant to FL § 7-103(a)(4), because the 12 month separation was the result of a protective order. The trial court misread the statute, but we do not perceive how Ms. Zeigler was prejudiced by the court's error.

FL § 7-103.1(b) states that "[i]n a proceeding under this title, a court may not consider compliance with an order issued [in a domestic violence action] as grounds for granting a decree of limited or absolute divorce." Mr. Zeigler's divorce action was based on FL § 7-103(a)(4), which provides that a court may grant an absolute divorce based upon a "12-month separation, when the parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application for divorce." The reason the parties lived separately and apart is because they were required to do so by the terms of the protective order. The trial court concluded that § 7-103.1(b) did not apply to Mr. Zeigler's action for divorce because he was not seeking a divorce on the grounds of voluntary separation. This conclusion is not supported by the language of the statute.

By its terms, § 7-103.1(b) applies to all proceedings under Title 7 of the Family Law Article, which includes actions for divorce. An action for divorce based upon a twelve month separation is no less an action for divorce than one based upon any of the other grounds set out in FL § 7-103. The restriction contained in § 7-103.1(b) applies to all of them.

These observations notwithstanding, appellate courts typically do not reverse a trial court's judgment unless the appealing party can demonstrate prejudice. *Barksdale v. Wilkowsky*, 419 Md. 649, 657-65 (2011). Ms. Zeigler presents no argument as to if or how she was prejudiced by the court's error, and we do not see prejudice from the record

before us—her counsel's primary goal was to preserve Ms. Zeigler's right to seek alimony and counsel was successful in doing so.

Ms. Zeigler's second contention on appeal is that the court erred in granting Mr. Zeigler's counter claim for absolute divorce because his "corroborating witness did not have actual knowledge of the full 12 month separation." In support of this contention, Ms. Zeigler directs our attention to the testimony of Mr. Zeigler's corroborating witness, Mr. Zeigler's father. He testified that, after Mr. Zeigler moved out of his father's residence, which occurred about six to eight months after the parties separated, he never visited his son at any of his son's residences.

While a party seeking divorce is required to offer corroborating testimony, FL § 7-101(b), "[t]he corroboration required varies with the circumstances of each case." *Das v. Das*, 133 Md. App. 1, 39 (2000). As this Court has explained, "as the likelihood of collusion decreases, so does the degree of corroboration needed." *Id.* Both parties sought a decree of divorce, and neither party contested that they had been living separate and apart for the 12 month period. The amount of corroborating evidence required under such circumstances is slight, and the testimony of the witness was sufficient.

APPEAL DISMISSED. APPELLANT TO PAY COSTS.