UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1989

September Term, 2014

KEITH T. RAFFERTY, JR.

v.

LORI A. SWEENEY,
f/k/a LORI A. RAFFERTY

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: June 20, 2017

In 2012, Lori Sweeney[1] filed a complaint against Keith Rafferty, Jr., in the Circuit Court for Cecil County, seeking a divorce, custody of two minor children, and related relief. Mr. Rafferty answered and counterclaimed for divorce, custody, and related relief. At trial, the court granted primary custody to Ms. Sweeney, and the parties reached a settlement as to their property claims. The court entered a judgment of absolute divorce that incorporated the terms of the settlement agreement.

Mr. Rafferty, representing himself, noted a timely appeal from the divorce judgment. Although many of his challenges are not properly before this Court, we conclude that the court did not err in granting the judgment of absolute divorce that incorporated the terms of the settlement agreement. The divorce judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Initial Divorce Complaints

Keith Rafferty and Lori Sweeney were married on September 13, 2006. On the day before their wedding, they signed a prenuptial agreement. One clause stated: "Both Parties agree that they are subject to the jurisdiction of the courts of the State of Pennsylvania."

The parties relocated from Pennsylvania to Elkton, Maryland, shortly after the birth of their first child in 2009. Their second child was born in 2010. While the family resided in Maryland, Mr. Rafferty and Ms. Sweeney commuted outside the state. Mr.

[1] During these proceedings, Lori Sweeney was named Lori Rafferty. The circuit court restored the name of Lori Sweeney when it granted a divorce. We refer to her as Ms. Sweeney throughout this opinion.

Rafferty worked in New Jersey, Ms. Sweeney worked in Pennsylvania, and the children attended daycare in Pennsylvania at a school near Ms. Sweeney's workplace.

In an apparent response to Mr. Rafferty's announcement that he wanted a divorce, Ms. Sweeney filed a divorce complaint in the Circuit Court for Cecil County on December 19, 2012. Her complaint stated that she and Mr. Rafferty had resided in Maryland for more than one year before the filing date. She alleged that Mr. Rafferty's conduct caused her to permanently leave the family home as of December 26, 2012. She requested a limited divorce on the ground of constructive desertion or voluntary separation. She asserted claims for sole custody of the children, child support, possession and use of the family home and family use personal property, alimony, a monetary award, and attorneys' fees. On Christmas Day of 2012, Ms. Sweeney left the family home and relocated with the two children to Havertown, Pennsylvania.

Mr. Rafferty filed an answer and a counterclaim for limited divorce. In his pleadings, Mr. Rafferty admitted that he was a Cecil County resident and that both parties had resided in Cecil County for more than one year before Ms. Sweeney's divorce filing. Mr. Rafferty asked the circuit court to grant him a limited divorce, custody, child support, possession and use of the family home and family use personal property, a monetary award, alimony, and attorneys' fees.

Mr. Rafferty included a copy of the prenuptial agreement from September 12, 2006, as an exhibit to his counterclaim. He alleged that the prenuptial agreement governed many property issues between the parties. In her answer, Ms. Sweeney admitted his allegations regarding the prenuptial agreement.

During the early months of 2013, Mr. Rafferty made several ex parte motions seeking immediate custody, which the court denied. The parties agreed to the entry of a temporary consent order, under which they would share equal custody of the children on an alternating schedule until the initial, pendente lite custody determination (or a settlement reached through mediation).

B. Mr. Rafferty's Efforts at Self-Representation

On May 20, 2013, the parties appeared with counsel before a domestic relations master[2] to determine the issues of pendente lite custody and child support. Only Ms. Sweeney was able to testify during the time allotted for the hearing. The court scheduled the remainder of the hearing for July 26, 2013.

Over the ensuing two months, Mr. Rafferty began acting as his own attorney notwithstanding that he had counsel of record. His attorney withdrew his appearance once he learned of the barrage of written motions that Mr. Rafferty had filed on his own behalf.

One of Mr. Rafferty's motions was styled as a "Motion to Dismiss or Lesser Releif [sic] in the Form of Motion to Transfer." In that motion, Mr. Rafferty asked the court to dismiss the case based on "improper venue," even though he recognized that he had waived that defense when he filed his answer. Alternatively, he asked the court to transfer the case to Delaware County, Pennsylvania, where Ms. Sweeney had relocated.

In the second of two motions for "Contempt of Court/Show Cause Order and/or

[2] The proceeding took place before March 15, 2015, when Rule 1-501 transformed domestic "masters" into "family magistrates."

Sanctions," Mr. Rafferty alleged that Ms. Sweeney had committed perjury in her divorce complaint by "deliberately conceal[ing] the existence of the prenuptial agreement." He asked the court to dismiss Ms. Sweeney's complaint on that basis.

Ms. Sweeney submitted responses, arguing that Mr. Rafferty made each of those motions in bad faith and without substantial justification, for the purpose of delaying the proceedings. The court issued orders denying Mr. Rafferty's motions. In each of those orders, the court awarded Ms. Sweeney $500 in attorneys' fees under Rule 1-341(a).

Mr. Rafferty moved for reconsideration of those rulings. He also filed a notice of appeal, in an apparent effort to challenge the denial of his requests for dismissal of the case. He further moved for a stay of the proceedings until the resolution of his appeal.

The circuit court denied his requests. The court also denied Mr. Rafferty's request to postpone the second day of the pendente lite hearing so that he could find new representation. Eventually, this Court dismissed his interlocutory appeal because of his failure to file an information report.

After the pendente lite hearing, the master issued two reports, recommending that the parties share joint legal custody, that Ms. Sweeney have primary physical custody, and that Mr. Rafferty pay child support. Mr. Rafferty retained new counsel and took timely exceptions to the custody recommendation. Within 10 days, Ms. Sweeney responded with her own timely exceptions (*see* Md. Rule 9-208(f)), challenging the amount of child support.

After an exceptions hearing, the circuit court issued a pendente lite order adopting the master's recommendation for custody and adopting Ms. Sweeney's proposal for child

support. On November 12, 2013, the court entered a separate "Order for Child Support," requiring Mr. Rafferty to pay $2,494 in child support for each month after August 2013. Mr. Rafferty moved to alter or amend the child support order and for a stay of that order. The court denied his motions. Mr. Rafferty filed a notice of in banc appeal at that time, apparently to challenge the pendente lite child support order. He later withdrew his request for in banc review.

C. Mr. Rafferty's Further Requests for Dismissal

Meanwhile, Mr. Rafferty submitted a written request that the court set a date for an "Absolute Divorce Hearing." The court assigned the case for a three-day trial, beginning on June 16, 2014, to resolve all open issues including the entitlement to an "Absolute Divorce," marital property, custody, and child support.

In February 2014, after substituting counsel once more, Mr. Rafferty filed a motion for declaratory relief or for partial summary judgment. He asked the court to declare that the prenuptial agreement was valid and enforceable, that it governed the distribution of property upon divorce, and that it barred Ms. Sweeney's claims for alimony and attorneys' fees. Citing the clause in which the parties had agreed that they were "subject to the jurisdiction of the courts of the State of Pennsylvania," he further asked the court to "relinquish[] jurisdiction" to Pennsylvania by dismissing the divorce complaint.

Five weeks before the scheduled trial date, Ms. Sweeney filed an amended pleading styled as a "Complaint for Absolute Divorce." The amended complaint stated that both parties had resided in Maryland for more than one year before her original

filing, but that Ms. Sweeney currently resided in Pennsylvania and Mr. Rafferty currently resided in New Jersey. Ms. Sweeney now sought an absolute divorce based on desertion or separation in excess of one year. She restated her other claims for custody, child support, possession and use of the family home and family use personal property, alimony, a monetary award, and attorneys' fees.

Mr. Rafferty moved for dismissal of Ms. Sweeney's complaint for absolute divorce. He contended that the circuit court lacked subject matter jurisdiction, either because the parties no longer lived in Maryland or because the prenuptial agreement stated that they were subject to jurisdiction in Pennsylvania.

The trial commenced on June 16, 2014. Before taking evidence, the court heard arguments on Mr. Rafferty's two pending motions. Counsel for Mr. Rafferty conceded that the court had "jurisdiction to effectuate a divorce," but he nevertheless argued that Pennsylvania was the appropriate forum. Counsel for Ms. Sweeney informed the court that Mr. Rafferty had already sued her in Pennsylvania in October 2013 for an alleged breach of the prenuptial agreement and that a Pennsylvania court had dismissed his suit in March 2014.

The court denied Mr. Rafferty's motions, but concluded that there was "no disagreement" that the prenuptial agreement resolved "most of the monetary issues." The court suggested that the parties should submit a joint statement or agreement about the division of property under the prenuptial agreement.

D. Trial in the Circuit Court

For the first two days of trial, the parties presented evidence on the custody claims.

After the second day of trial, the court delivered an oral opinion on custody.

The court determined that Ms. Sweeney should have sole legal custody and primary physical custody of the two minor children and that Mr. Rafferty should have visitation every other weekend, for three weeks during the summer, and on alternating holidays. Within one week after the trial, the court entered an order to memorialize its custody rulings and to establish Mr. Rafferty's visitation schedule.

On the final day of trial, the court took evidence on the issues of divorce, child support, and the remaining financial issues. During a recess, the parties reached an agreement to settle their property claims. The court directed Ms. Sweeney's attorney to submit a proposed order granting an absolute divorce and incorporating the property settlement agreement.

The attorneys prepared a written version of their settlement agreement, which they submitted to the court. On November 10, 2014, the court entered an order titled "Judgment of Absolute Divorce." The order granted Ms. Sweeney's claim for absolute divorce and dismissed Mr. Rafferty's counterclaims. It stated that the terms of the parties' October 2014 property settlement agreement and their September 2006 prenuptial agreement were incorporated but not merged into the divorce judgment.

A few days after the entry of that order, Mr. Rafferty's trial counsel withdrew his appearance, and Mr. Rafferty, representing himself, filed a notice of appeal. On the same day, Mr. Rafferty moved for a stay of the court's orders pending the outcome of his appeal. The circuit court refused to grant a stay. This Court denied his additional requests to stay the circuit court's orders pending the appeal.

Although the circuit court had announced that it would issue a separate order for its child support determination, the court has yet to do so. In November 2014, Ms. Sweeney requested that Mr. Rafferty be held in contempt for failing to comply with the settlement and for failing to pay child support under the pendente lite order. The court deferred its decision on the contempt request because this appeal was pending.

E. Mr. Rafferty's Non-Compliance with Rules of Appellate Procedure

Representing himself in his appeal, Mr. Rafferty submitted a brief that did not comply with the requirements of the Maryland Rules. This Court directed him to file copies of a corrected brief, in full compliance with all applicable rules, on or before Friday, April 24, 2015. On the Monday after the expiration of that deadline, Mr. Rafferty submitted copies of a "corrected" brief that still did not comply with the applicable rules.

Specifically, Mr. Rafferty had violated the typeface and page numbering requirements in an effort to evade the limits on the length of his brief. He used the "Gill Sans MT Condensed" font, which is not an approved font, to decrease the width of characters and to increase the number of characters on each line of text. He also used Roman numerals for the first nine pages of the text after the tables of contents and citations, and listed the tenth page as page "1." The combined effect of his manipulations was to create a brief that appeared to end on page "36," even though its text greatly exceeded the amount of text permissible under the 35-page limit in effect at that time.[3]

[3] As a result of its style violations, Mr. Rafferty's first corrected brief contained more than 20,000 words. As of 2015, the rules no longer use a page limit, but instead provide that an appellant's brief "shall not exceed 9,100 words[.]" Md. Rule 8-503(d)(1).

This Court dismissed the appeal because the corrected brief failed to comply with this Court's directions, and Mr. Rafferty moved for reconsideration. He claimed that he had submitted a written request for an exception to the 35-page limit, even though this Court had no record of receiving it. He further claimed that the clerk had not sent him a list of approved fonts, even though the clerk had included that list when it sent notice of the filing deadlines. In addition, he denied that he had prepared his brief with the "Gill Sans MT Condensed" font and claimed to have used the "Gill Sans MT" font.

Notwithstanding Mr. Rafferty's conduct, this Court vacated its dismissal order and granted him an additional month to file a second corrected brief, not to exceed 40 pages. His second corrected brief complied with many of the Court's instructions, but still deviated from the rules. Ms. Sweeney's brief contained no objection to the deviations in Mr. Rafferty's second corrected brief.

APPELLATE JURISDICTION

In his appeal, Mr. Rafferty takes issue with nearly every adverse development that occurred during the case. For her part, Ms. Sweeney argues that this Court should uphold all decisions by the circuit court. Although neither party has questioned this Court's jurisdiction, we have an independent obligation to ensure that the orders we review are properly appealable. *See, e.g.*, *Milburn v. Milburn*, 142 Md. App. 518, 522-23 (2002).

Generally, parties have the right to appeal after the circuit court enters a "final judgment" in a civil case. *See* Md. Code (1974, 2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article ("CJP"). An order, regardless of its title, is not a "final judgment" unless it embodies the complete adjudication of all claims in the case raised by

all parties. *See, e.g.*, *Remson v. Krausen*, 206 Md. App. 53, 71 (2012) (citing *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)); *see also* Md. Rule 2-602(a). The judgment of absolute divorce, from which Mr. Rafferty took his appeal, was not the final judgment in the case, because the court had not completed its adjudication of all claims.

In their respective pleadings, both spouses had asserted claims against one another for divorce, custody, child support, and a variety of forms of other relief related to their property. At the end of the trial, the court explained that it would resolve all claims through three separate orders: (1) a child custody order in accordance with its oral ruling; (2) a judgment of absolute divorce in accordance with the property settlement, which the court directed the parties to submit for approval; and (3) a child support order, which the court said that it would prepare based on the evidence of the parents' incomes.

The court entered the custody order on August 31, 2014. Neither party appealed within 30 days after the entry of that order.[4]

On November 10, 2014, the court entered the "Judgment of Absolute Divorce," which incorporated the terms of the parties' settlement agreement and prenuptial agreement. Mr. Rafferty filed his notice of appeal one week later.

For reasons that are not apparent from the record, the circuit court has not issued

[4] In one of the few exceptions to the final judgment rule, CJP § 12-303(3)(x) permits parties to take an immediate appeal of an order depriving a parent of the care and custody of his or her child. Thus, Mr. Rafferty could have taken an appeal, solely on the custody issue, within 30 days after the entry of the custody order.

the third order, which was needed to resolve the parties' claims for child support.[5] Because the court has yet to issue the anticipated order to resolve the child support claims, we have no conventional final judgment. *See Rohrbeck v. Rohrbeck*, 318 Md. at 41-44. Nonetheless, we conclude that Mr. Rafferty appealed at an appropriate time to seek review on the limited issue of the validity of the divorce judgment.

In *Pappas v. Pappas*, 287 Md. 455, 465-66 (1980), the Court of Appeals held that an order that grants a divorce but does not resolve all other claims in the action is not immediately appealable unless the trial court expressly determines that there is no just reason for delay and directs the entry of judgment as to the divorce claim. In that case, the Court concluded that a trial court had not entered an appealable judgment when it granted a divorce, because the court reserved the issue of property division and left open the amounts of alimony, child support, and counsel fees to be paid. *Id.* at 463. The Court reasoned that, because no statutory exception permitted an immediate appeal from the grant of a divorce, the parties could take an immediate appeal only if the trial judge expressly determined that there was no just reason for delay and certified the divorce judgment as final under the predecessor to current Rule 2-602(b). *See Pappas*, 287 Md. at 465. The Court commented that "if the trial judge is of the view that the divorce issue is one ripe for consideration . . . , he no doubt will make the appropriate certification[.]" *Id.* at 466.

[5] The docket indicates that at least one party may have become aware that the circuit court had never issued a final order on the child support claims. In November 2016, an unidentified party filed a "Motion to Terminate Order and Motion to Establish Child Support (Non Pendente Lite)." That motion was later withdrawn.

After the divorce proceedings in *Pappas*, a new statute took effect regarding the appealability of a divorce judgment. In its current form, that statute provides: "Any decree of annulment or of limited or absolute divorce in which the court reserves any power under this subtitle is final and subject to appeal in all other respects." Md. Code (1984, 2012 Repl. Vol.), § 8-213(b) of the Family Law Article ("FL"). The subtitle cited in that provision (Subtitle 2 of Title 8 of the Family Law Article) governs the disposition of property upon a divorce. Under this statute, if an order grants a divorce, but reserves marital property issues for later determination, it is a final and appealable order, regardless of whether the trial court certifies the judgment on the divorce claim as final under Rule 2-602(b). *See Parker v. Robbins*, 68 Md. App. 597, 601-02 (1986).

Although the statute specifically applies in cases in which the court has reserved a decision regarding marital property, the Maryland appellate courts have interpreted it more expansively. In *Davis v. Davis*, 97 Md. App. 1, 16-18 (1993), *aff'd*, 335 Md. 699 (1994), this Court held that an order granting a divorce was final and appealable where the court had reserved issues of alimony and counsel fees in addition to reserving the issue of marital property. The husband did not appeal at the time the court granted the divorce, but instead waited for several months until the court resolved all remaining issues. *Id.* at 8, 18. This Court reasoned that the issues of alimony and counsel fees were "incidental to the divorce action" and that the reservation of those issues "did not have the effect of rendering the divorce decree other than final." *Id.* at 18. This Court concluded that the husband was precluded from challenging the validity of the divorce decree because he had had failed to note a timely appeal after its entry. *Id.* The Court of

Appeals ultimately agreed with that aspect of the opinion, holding that "any challenge to the validity of the judgment of absolute divorce was required to have been filed within 30 days" after the entry of that order. *Davis v. Davis*, 335 Md. at 717.[6]

Among his many challenges here, Mr. Rafferty assails the validity of the divorce judgment. Mr. Rafferty did what he was required to do, under *Davis*, to assert that challenge: he filed a notice of appeal within 30 days after the court entered the divorce judgment. This case differs from *Davis*, however, in at least one respect. Here, the court did not reserve any marital property issues for later determination because the settlement agreement resolved those issues. The court reserved only the claims for child support. Arguably, therefore, FL § 8-213(b) might not apply to make the divorce judgment "final and subject to appeal in all other respects" by operation of law.

Even if the judgment of absolute divorce were not automatically appealable under FL § 8-213(b), we would conclude that the circuit court had discretion to certify its order as a final judgment on the divorce claims. In cases involving multiple claims, Rule 2-602(b)(1) authorizes a trial court to direct the entry of final judgment as to one or more but fewer than all claims in the case if the trial court expressly determines that there is no just reason for delay. In *Pappas*, 287 Md. at 465-66, the Court signaled that the trial

[6] The Court of Appeals disagreed with one part of this Court's reasoning. The Court of Appeals concluded that the trial court had entered a final judgment as to the divorce immediately after the hearing. *Davis v. Davis*, 335 Md. at 711. This Court believed that the trial court had not entered a final judgment until it entered another written order several months later. *Davis v. Davis*, 97 Md. App. at 11. Both agreed that the husband needed to appeal within 30 days of the divorce judgment if he wished the challenge the validity of the divorce, notwithstanding the pending claims for alimony and counsel fees.

court had discretion under this Rule to certify a divorce judgment as final where the trial court had left open several issues including "the amount to be paid for child support[.]" *Id.* at 463. The *Pappas* Court was constrained to dismiss the appeal because, under the rules in effect at that time, the "determination as to whether a case is or is not one in which there is no just reason for delay" was exclusively "one for the trial judge[.]" *Id.* at 465.

Under the current rules, there is no need to return this case to the circuit court to make that certification. Several years after the *Pappas* decision, the Court promulgated Rule 8-602(e). *See generally Brown & Williamson Tobacco Corp. v. Gress*, 378 Md. 667, 678-80 (2003). Rule 8-602(e)(1)(C) now permits an appellate court to "enter a final judgment on its own initiative" if it determines that the trial court could have certified a final judgment as to one or more of the claims under Rule 2-602(b). If the appellate court does so, "it shall treat the notice of appeal as if filed on the date of the entry of the judgment and proceed with the appeal." Md. Rule 8-602(e)(3).

In this case, there was no just reason to delay the entry of final judgment as to the divorce simply because the amount of child support had not been determined. Both parties had a genuine interest in resolving Mr. Rafferty's attack on the validity of the divorce judgment as soon as possible, so that they could be certain about whether their marriage was truly dissolved (and whether Ms. Sweeney's name had been restored). Certainly, there is no just reason to send all aspects of this case back to the circuit court now, nearly three years after the divorce trial.

In sum, we conclude that Mr. Rafferty noted his appeal at the appropriate time to

challenge the validity of the divorce judgment. *See Davis v. Davis*, 335 Md. at 717-18. Alternatively, we would exercise our discretion to enter a final judgment on our own initiative under Rule 8-602(e)(1)(C) as to the divorce claim, because "the divorce issue is . . . ripe for consideration" (*Pappas*, 287 Md. at 466) at this time.

Even though the order granting the divorce is properly appealable, this Court has not thereby acquired jurisdiction over every other order entered in the case. *See Maryland Bd. of Physicians v. Geier*, 225 Md. App. 114, 140-41 (2015) (citing *Snowden v. Baltimore Gas & Elec. Co.*, 300 Md. 555, 560 n.2 (1984)). In the appeal from the divorce judgment alone, our review extends to that judgment and to previous rulings to the extent that those rulings "directly control and are inextricably bound to the order that is treated as final for purposes of appeal[.]" *Davis v. Attorney Gen.*, 187 Md. App. 110, 123 (2009). Our review of the divorce judgment does not extend to other orders not directly connected to the divorce, including (most notably) the orders that relate to the claims for custody and pendente lite child support.

QUESTIONS PRESENTED

Mr. Rafferty's second corrected brief includes a dozen questions, some with multiple sub-questions, which we have reproduced in the appendix to this opinion. We will address his questions in a reorganized and restated form.

Only the first three of Mr. Rafferty's questions directly concern the divorce judgment that is properly the subject of his appeal. Those questions are:

1. Did the circuit court err by assigning the case to a sitting judge after an earlier administrative order designating the case for assignment to a visiting judge?

2. Did the circuit court err in denying Mr. Rafferty's requests for dismissal of the divorce action?

3. Did the circuit court err in denying Mr. Rafferty's motion to dismiss the amended complaint?

Our answer to each of those questions is: No. Because the circuit court made no error in those rulings, we affirm the judgement of absolute divorce.

DISCUSSION

I. Assignment of the Trial Judge

As the first issue in this appeal, Mr. Rafferty complains that a sitting judge from Cecil County presided over the trial. According to Mr. Rafferty, the trial judge "inappropriately re-enter[ed]" the case after "having previously removed herself" from it. His assertions are meritless and unsupported by the record.

As the sole basis for his contention, Mr. Rafferty points to an administrative assignment order issued in October 2013, about eight months before the trial. At that time, the administrative judge of the circuit court ordered "that a visiting Judge be assigned to hear all civil matters involving Lori A. Rafferty vs. Keith Rafferty[.]" No party objected, however, when a sitting judge conducted a subsequent hearing on the exceptions to the master's reports. Soon thereafter, Mr. Rafferty submitted a written request for an absolute divorce hearing, but he did not request the assignment of a visiting judge.

In December 2013, the court sent notice to the parties that Judge Jane Cairns Murray of the Circuit Court for Cecil County had been assigned to preside over the trial on absolute divorce and all other open issues. The record does not show that Mr.

Rafferty objected to the assignment of Judge Murray, either in writing or at the motions hearing that followed. The trial transcript shows that he made no objection when Judge Murray ultimately presided over the trial. If Mr. Rafferty wished to challenge the assignment of Judge Murray based on the initial administrative order, he needed to do so promptly after the court assigned her. *See Conwell Law LLC v. Tung*, 221 Md. App. 481, 516-17 (2015). He cannot complain about the assignment for the first time on appeal.

Even if Mr. Rafferty had objected, the circuit court would not have been required to assign a visiting judge for the trial. The record does not disclose the reason for the administrative judge's initial decision to assign the case to a visiting judge, so there is no indication that the decision was based on anything other than neutral, administrative reasons. That initial decision was superseded by the later decision to assign the case to one of the sitting judges. Mr. Rafferty has pointed to nothing that would create any question as to Judge Murray's impartiality or that would have amounted to grounds for disqualifying her. In short, Mr. Rafferty has failed to identify any error or prejudice in the assignment of the trial judge.

II. Requests for Dismissal of the Initial Divorce Complaint

The centerpiece of Mr. Rafferty's brief is his contention that the circuit court should have granted his requests to dismiss Ms. Sweeney's initial divorce complaint on various grounds. The different iterations of his argument focus on two facts: (1) both parties relocated from Maryland to other states after they filed their respective complaints; and (2) in the prenuptial agreement, the parties agreed that they were subject to jurisdiction in Pennsylvania. Mr. Rafferty repeatedly argues that one or both of these

facts should have prevented a Maryland court from considering the divorce action. We conclude that the circuit court correctly rejected each of his requests.

Although Mr. Rafferty's brief is not a model of clarity, his argument calls into question whether the circuit court had jurisdiction to grant the divorce. A Maryland court acquires jurisdiction over a particular divorce if at least one spouse resides in Maryland at the time that the complaint is filed. *See Wamsley v. Wamsley*, 333 Md. 454, 457-58 (1994); *Fletcher v. Fletcher*, 95 Md. App. 114, 124 (1993).

When she filed for divorce on December 19, 2012, Ms. Sweeney alleged that both parties had resided in Cecil County, Maryland, for several years. In his answer, Mr. Rafferty admitted that he currently resided in Cecil County and that both parties had resided in Cecil County for more than one year before the filing of the complaint. In short, it was undisputed that *both* parties resided in Maryland at the time that Ms. Sweeney filed for divorce. The residence requirement therefore was amply satisfied. *See Hernandez v. Hernandez*, 169 Md. App. 679, 687 (2006).[7]

Because of Mr. Rafferty's Maryland domicile, he was subject to personal jurisdiction in the Maryland courts as to any cause of action against him. *See* CJP § 6-102(a). In any event, Mr. Rafferty waived the defense of lack of personal jurisdiction

[7] At the time of the proceedings in this case, if the grounds for divorce occurred outside of Maryland, FL § 7-101(a) imposed a one-year residency requirement: "If the grounds for the divorce occurred outside of this State, a party may not apply for a divorce unless one of the parties has resided in this State for at least 1 year before the application is filed." Even if the "grounds" for divorce occurred outside Maryland, the pleadings from both parties established that both parties had resided in Maryland for more than one year before the initial filing.

because he failed to raise that defense before he filed an answer. *See* Md. Rule 2-322(a); *Hernandez v. Hernandez*, 169 Md. App. at 687. He also submitted himself to the jurisdiction of the Circuit Court for Cecil County by filing his counterclaim for divorce in that court.

Finally, after it acquired jurisdiction over the complaint, the circuit court did not lose jurisdiction when the parties changed their residences. *See Brewster v. Brewster*, 207 Md. 193, 199 (1955) ("it is well settled that the jurisdiction of an equity or divorce court, once acquired, continues until all matters in litigation are finally disposed of"); *Boucher v. Shomber*, 65 Md. App. 470, 478 (1985) (same). There can be no serious question, therefore, that the Cecil County court had jurisdiction to dissolve the parties' marriage.

Through his various motions, Mr. Rafferty contended that the circuit court lacked jurisdiction because the prenuptial agreement included the following sentence: "Both Parties agree that they are subject to the jurisdiction of the courts of the State of Pennsylvania." His argument fails for at least two reasons.

First, the clause itself did not purport to preclude Maryland or any other state from exercising jurisdiction: it merely expressed the parties' agreement that a Pennsylvania court could hear a dispute pertaining to the prenuptial agreement. The clause did not identify Pennsylvania as the "exclusive" jurisdiction, nor did it express a promise to bring divorce claims only in Pennsylvania. Giving full effect to the clause as written, the agreement did not prohibit either party from filing for divorce in Maryland.

Second, even if the agreement had identified Pennsylvania as the exclusive forum

for their divorce claims (which it did not), such an agreement "'cannot oust a state of judicial jurisdiction[.]'" *Gilman v. Wheat, First Secs., Inc.*, 345 Md. 361, 373 n.3 (1997) (quoting Restatement (Second) of Conflict of Laws § 80 (1969)). Mr. Rafferty unequivocally waived any contractual right to demand an adjudication in Pennsylvania when he filed his counterclaim and asked the Circuit Court for Cecil County to grant him a divorce.

In addition to his jurisdictional challenge, Mr. Rafferty has objected to venue, but he did so long after he asserted his counterclaims and fired his first attorney. Mr. Rafferty had already waived the defense of improper venue by failing to raise that defense before filing his answer. *See* Md. Rule 2-322(a) (providing that the defense of improper venue "shall be made by motion to dismiss filed before the answer," and "[i]f not so made and the answer is filed, th[at] defense[] [is] waived"). Mr. Rafferty even recognized that his motion was untimely, but he complained that he "was not advised by legal counsel . . . that he should have filed" a preliminary motion to dismiss. His failure to understand the effect of filing an answer does not change the legal effect of that answer. *See Tretick v. Layman*, 95 Md. App. 62, 68-69 (1993) (explaining that rules of procedure apply equally to all parties regardless of their relative level of expertise).

Even if Mr. Rafferty had raised a timely motion to dismiss based on improper venue, that motion would have been unsuccessful. To determine proper venue, "[t]he legal sufficiency of the forum selected is determined at the time of filing." *Nodeen v. Sigurdsson*, 408 Md. 167, 178 (2009). CJP § 6-201(a) provides that, in general, "a civil action shall be brought in a county where the defendant resides[.]" In addition, a divorce

action may be brought in the county "[w]here the plaintiff resides[.]" CJP § 6-202(1). There is no doubt that Cecil County was the proper venue for the divorce action, because both parties resided in that county when Ms. Sweeney filed for divorce.

In the motion to dismiss that he filed when he was representing himself, Mr. Rafferty also requested a transfer of the action "to Delaware County, Pennsylvania." His argument quoted cases applying Rule 2-327(c), which permits the court to "transfer any action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice." By its very terms, this Rule does not empower the circuit court to transfer a case to another state. More broadly, however, the circuit court has inherent power to dismiss an action based on the doctrine of forum non conveniens. *Johnson v. G.D. Searle & Co.*, 314 Md. 521, 527 (1989). CJP § 6-104(a) provides that the circuit court "may stay or dismiss the action in whole or in part on any conditions it considers just[,]" if it "finds that in the interest of substantial justice an action should be heard in another forum[.]"

In considering a motion based on the doctrine of forum non conveniens, "[t]he plaintiffs' choice of forum is not to be lightly disturbed." *Jones v. Prince George's Cnty.*, 378 Md. 98, 120 (2003) (citing *Leung v. Nunes*, 354 Md. 217, 224-25 (1999)); *see also Johnson v. G.D. Searle & Co.*, 314 Md. at 530 ("'since it is for the plaintiff to choose the place of suit, his [or her] choice of forum should not be disturbed except for weighty reasons'") (quoting Restatement (Second) of Conflict of Laws, § 84 cmt. c (1971)). As Mr. Rafferty himself observed in his motion, a motion seeking to disturb the plaintiff's choice of forum should be granted only where the balance of interests "'weighs

strongly in favor of the moving party.'" *Leung v. Nunes*, 354 Md. at 224 (quoting *Odenton Dev. Co. v. Lamy*, 320 Md. 33, 40 (1990)). Mr. Rafferty's motion failed to make the requisite showing.

Mr. Rafferty asserted that he was a Pennsylvania resident or would become a Pennsylvania resident "by the end of the calendar year."[8] He further asserted that the parties' average commute time to Cecil County exceeded 90 minutes. Mr. Rafferty also made abstract assertions about his alleged "[i]nability to produce sufficient witnesses and documentation," but he identified no examples. These types of assertions do not weigh strongly in favor of disturbing the plaintiff's choice of forum. *See Smith v. Johns Hopkins Cmty. Physicians, Inc.*, 209 Md. App. 406, 417-18 (2013); *see also Leung v. Nunes*, 354 Md. at 228-29. Moreover, a transfer of the case at that stage in the proceedings (after discovery and during a pendente lite hearing) would have resulted in its own inconvenience. *See Wagner v. Wagner*, 109 Md. App. 1, 52-53 (1996) (holding that circuit court did not abuse its discretion in denying motion to transfer on inconvenient forum grounds where "[a] transfer would have required that a new court acquaint itself with the voluminous record").

In a motion for contempt that he filed on his own behalf, Mr. Rafferty complained that Ms. Sweeney's initial complaint, which she signed under the penalty of perjury,

[8] Ms. Sweeney denied the allegations of his Pennsylvania residency, and her denials may have been well-founded. Despite his assertions that he had severed all ties with Maryland, Mr. Rafferty testified a month later that he was splitting his time between the Maryland address and a Pennsylvania address. By the time of trial, Mr. Rafferty had established residence in New Jersey.

included an allegation that "[n]one" of the parties' real and personal property "ha[d] been the subject of any valid agreement between the parties." Mr. Rafferty asked the court to dismiss the complaint because Ms. Sweeney had failed to disclose the existence of the prenuptial agreement.

The circuit court did not err in refusing to dismiss the action on that basis. Mr. Rafferty has failed to identify any authority, and we are aware of none, that would authorize or require a court to dismiss an entire action based on an inaccurate allegation (particularly one embodying a legal conclusion).[9] Moreover, we fail to see how Mr. Rafferty suffered any prejudice because of the failure to mention the prenuptial agreement in the initial complaint. After he submitted a copy of the prenuptial agreement with his counterclaim, Ms. Sweeney promptly admitted his allegation that the parties had entered into a prenuptial agreement "settling many of the marital [property] issues, real and personal[.]" Later, she filed an amended pleading, alleging that "[s]ome of the property" owned by the parties was subject to a valid agreement.

Long after the denial of the motions that he filed while he was representing himself, Mr. Rafferty retained new counsel and again tried to persuade the court to dismiss Ms. Sweeney's divorce complaint. He requested that relief within a motion for declaratory relief or for partial summary judgment about the validity of the prenuptial agreement. The court heard arguments on that motion on the first day of trial. In a

[9] Mr. Rafferty moved for contempt "pursuant to Maryland [R]ule 2-327(c)," which authorizes a transfer to another circuit court based on concerns about the inconvenience of the forum.

confusing and contradictory fashion, Mr. Rafferty's attorney asserted that the court lacked "subject matter jurisdiction," but also told the court that it had "jurisdiction to effectuate a divorce" because both parties lived in Maryland when Ms. Sweeney filed for divorce. His counsel lamented that "the divorce itself" was "perhaps is the only reason Maryland retains jurisdiction." He later added: "This Court can grant a divorce. We're just simply saying the prenuptial agreement is valid and enforceable by this Court. In other words, if you grant a divorce, you must, we suggest, enforce an agreement that is binding between the parties."

The court denied his motion, but concluded that there was "no disagreement" between the parties that the prenuptial agreement "resolve[d] most of the monetary issues." Just as the circuit court correctly denied Mr. Rafferty's earlier motions to dismiss, the court correctly declined his trial counsel's request for dismissal on jurisdictional grounds.

On appeal, Mr. Rafferty appears to challenge another aspect of the ruling. He argues that the court erred by refusing to enter partial summary judgment as to the validity of the prenuptial agreement. Apparently, he believes that in the settlement he agreed to give Ms. Sweeney more assets than she could have received under the prenuptial agreement. He seeks to place the blame upon the court.

The court did not abuse its discretion in denying his motion. Even where the facts are not in dispute, a trial court retains discretion to deny a motion for summary judgment in favor of a full hearing on the merits. *See, e.g.*, *Dashiell v. Meeks*, 396 Md. 149, 164-65 (2006). Despite Mr. Rafferty's assertion that the denial of the motion for summary

judgment resulted in "duress and coercion" upon him, the ruling did not preclude him from defending the case on the merits. *See Mathis v. Hargrove*, 166 Md. App. 286, 306 (2005).

Indeed, there is no indication that Mr. Rafferty suffered any prejudice from the court's decision not to formally declare that the prenuptial agreement was valid. As counsel for Ms. Sweeney conceded from the beginning of the trial, the validity of the agreement was not in dispute. The application of the prenuptial agreement to the facts was in dispute, at least temporarily, but the parties settled their property claims before the court could rule on those issues. To the extent that the judgment concerned property claims, it included no court rulings on the merits of those claims. The portion of the judgment that incorporated the property settlement was, in substance, a consent order. *See Barnes v. Barnes*, 181 Md. App. 390, 409 (2008) (explaining that a consent order results when parties enter into an agreement in open court intending that the court will embody their agreement in a subsequent written order).

In addition, when they announced their settlement, Mr. Rafferty expressly agreed that he was "waiving the conclusion of the trial" and that he was willing to "accept the[] terms in lieu of the continuation of the trial" on those claims. By doing so, he gave up his right to complain on appeal about the disposition of property under the settlement. *See Smith v. Luber*, 165 Md. App. 458, 468 (2005) ("[b]y agreeing to settle the parties give up any meritorious claims or defenses they may have had in order to avoid further litigation") (citation and quotation marks omitted). Because there is "no evidence on the record to contradict the conclusion that both parties voluntarily agreed to the terms," Mr.

Rafferty has no basis to appeal from portions of the order to which he consented. *Barnes v. Barnes*, 181 Md. App. at 420.[10]

Although he fails to elaborate on the point, Mr. Rafferty's brief includes a few assertions that the settlement agreement is unenforceable because it was "unsigned." He is mistaken. In general, a signature is not required to bring a contract into existence unless the contract terms require the parties' signatures as a condition precedent to the contract. *See, e.g.*, *All State Home Mortg., Inc. v. Daniel*, 187 Md. App. 166, 181 (2009). Neither their oral agreement nor the written instrument included such a condition. Furthermore, although the parties did not sign the signature page, they demonstrated mutual assent by placing their initials on each page of the written agreement, by acknowledging before separate notaries "that the . . . Agreement [wa]s in fact [his or her] act and deed and that [he or she] ha[d] full understanding" of it, and by signing a handwritten statement on an attachment, stating that they would divide their property "according to the property settlement agreement." Mr. Rafferty is bound by the property settlement agreement that is incorporated into the judgment. *See Barnes v. Barnes*, 181

[10] Within another of his questions presented, Mr. Rafferty takes issue with what he calls the trial court's "denial" of certain evidence. He asserts that the trial court "accepted parts of the parties[']s prenuptial agreement while refusing others." The pages that he cites from the record extract do not support his assertion. Although his argument is difficult to comprehend, he appears to allege that Ms. Sweeney secretly destroyed the addendums to the prenuptial agreement. Even if his allegation were true, it would not demonstrate any error by the court. *See DeLuca v. State*, 78 Md. App. 395, 397-98 (1989) (explaining that it is a fundamental tenet of appellate review that error occurs only when a judge is called upon by the parties or by circumstances to make a ruling). The court never made findings or conclusions about the content of the prenuptial agreement because Mr. Rafferty asked the court not to do so when he agreed to settle the property claims.

Md. App. at 400-01, 409 (holding that settlement agreement reached in open court was binding upon the parties even though party refused to sign written instrument that accurately reflected the agreed-upon terms).

III. Motion for Dismissal of Amended Complaint for Absolute Divorce

In addition to his arguments regarding dismissal of Ms. Sweeney's original complaint, Mr. Rafferty contends that the court should have granted his motion to dismiss Ms. Sweeney's amended complaint for absolute divorce.

In their original complaints, both parties had asked the circuit court to grant a limited divorce on the ground of desertion or separation. After they had been separated for nearly a year later, Mr. Rafferty submitted a written request for an "Absolute Divorce Hearing," which the court scheduled for June 2014. More than one month before the trial, Ms. Sweeney filed a new pleading, styled as a "Complaint for Absolute Divorce." She no longer requested a limited divorce, but asked instead for an absolute divorce on the ground of desertion or separation in excess of one year.[11]

Mr. Rafferty responded with yet another attempt to attack the court's jurisdiction. He filed a motion to dismiss the "Complaint for Absolute Divorce," asserting that the circuit court now lacked subject matter jurisdiction. On the first day of trial, his attorney argued that his latest motion to dismiss was "jurisdictional in nature" and "essentially

[11] Ms. Sweeney's initial pleadings already made it apparent that she contemplated an absolute divorce. Her original complaint requested a limited divorce based on "a voluntary separation in excess of one year." A one-year separation is a ground for absolute divorce. FL § 7-103(a)(4). A separation of any length is a ground for limited divorce. FL § 7-102(a)(4).

raise[d] the same questions" from the other motions. The court denied his motion. Later, Mr. Rafferty made no objection when the court announced that it would grant an absolute divorce rather than a limited divorce.

On appeal, Mr. Rafferty contends that the claim for absolute divorce in Ms. Sweeney's second complaint from May 2014 amounted to a "separate action," which the court should have dismissed because she had been residing in Pennsylvania since December 2012. He argues that the Maryland Rules "do not provide entitlement to file for Absolute Divorce if Limited Divorce was previously filed in the jurisdiction."

As Ms. Sweeney has aptly noted, her second pleading was in substance an amended complaint. Ms. Sweeney did not file her second complaint as a separate action but as a successive pleading under the existing action over which the court had jurisdiction. When construing a pleading "courts must ordinarily look beyond labels . . . and make determinations based on . . . substance." *Piven v. Comcast Corp.*, 397 Md. 278, 290 (2007). Notwithstanding the title, her "Complaint for Absolute Divorce" was an amended complaint. *See Montgomery Cnty. v. Fraternal Order of Police*, 222 Md. App. 278, 288 n.6 (2015).

Contrary to Mr. Rafferty's suggestion, the Maryland Rules expressly permit amendments to a divorce complaint to assert other grounds for divorce. Rule 9-202(c) provides: "Except when a judgment of limited divorce has been entered, a complaint may be amended pursuant to Rule 2-341 to include a ground for divorce that by reason of the passage of sufficient time has become a ground for divorce after the filing of the

complaint."[12] Ms. Sweeney was entitled to file her amendment without leave of the court because she filed it more than 30 days before the scheduled trial date and because the scheduling order established no other deadline for amendments. *See* Md. Rule 2-341(a).

If Mr. Rafferty had any valid objection to the amendment, the proper recourse was to move to strike the new pleading under Rule 2-341(a), not to seek dismissal of the entire action. In any event, the entire record makes it clear that Mr. Rafferty did not oppose substituting the absolute divorce claim for the limited divorce claim. As the circuit court noted, Mr. Rafferty himself had already submitted a request for a trial on the issue of an "Absolute Divorce." His final motion to dismiss should not fare any better than his other motions did simply because he directed it at the amended pleadings that Ms. Sweeney filed after the separation had continued without interruption for a full year.

ADDITIONAL QUESTIONS PRESENTED

The remaining questions from Mr. Rafferty's brief do not directly relate to the divorce judgment. In brief summary, he purports to challenge the denial of his ex parte motions for custody, the denial of a continuance of the pendente lite hearing, the order for pendente lite child support, the awards of attorneys' fees under Rule 1-341(a), the grant of a motion for counseling of the children, the exclusion of certain evidence and witnesses at the custody trial, certain restrictions in the final custody ruling, and orders

[12] Even after a court grants a limited divorce, parties are permitted to "file a supplemental complaint for an absolute divorce in the same action" where "the sole ground for the absolute divorce is that the basis of the limited divorce by reason of the lapse of sufficient time has become a ground for an absolute divorce[.]" Md. Rule 9-202(d).

enforcing the judgment after he filed his notice of appeal.

Those remaining questions are not properly before this Court on the appeal from the divorce judgment alone, so we can neither affirm nor reverse them at this time. As explained previously, the circuit court has not yet entered a final judgment. Once the court enters a final judgment (by entering an order that completely adjudicates the unresolved claims for child support), either party may take an appeal at that time. On a timely appeal from the final judgment, the other interlocutory orders in the case will be open for appellate review. *See* Md. Rule 8-131(d).[13]

CONCLUSION

This Court has appellate jurisdiction solely over the judgment of absolute divorce.

[13] In the interest of "avoid[ing] the expense and delay of another appeal" (Md. Rule 8-131(a)), we have examined the record and determined that many of Mr. Rafferty's other contentions are without merit. Issues related to emergency custody and pendente lite custody are moot at this point, because a final custody order is already in place. *See Cabrera v. Mercado*, 230 Md. App. 37, 87 (2016). Mr. Rafferty failed to preserve his challenges to the decisions regarding counseling and the use of physical discipline, because he made no objection in the circuit court. *See, e.g.*, *Cohen v. Cohen*, 162 Md. App. 599, 607-08 (2005). An appellate court cannot evaluate whether he was prejudiced by the exclusion of certain government reports, because his argument improperly relies on materials from his record extract that are not part of the record. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 200 (2008). The circuit court did not abuse its discretion when it precluded Mr. Rafferty from calling three witnesses during the custody trial, as a sanction for failing to identify those witnesses until just 12 days before the trial date and over a year after the discovery deadline. *See Heineman v. Bright*, 124 Md. App. 1, 11 (1998). Mr. Rafferty also asserts that the court excluded copies of emails from evidence and that the court issued an order barring the children from being supervised by their paternal grandmother; the record shows that the court did neither of those things. Finally, absent a stay, Mr. Rafferty's notice of appeal did not divest the court of its fundamental power to enforce its orders while the appeal was pending. *See In re Special Investigation No. 281*, 299 Md. 181, 201-02 (1984). We express no opinion on the issues of child support and attorneys' fees, because those issues are not ripe at this time.

Mr. Rafferty has identified no error in that judgment, and so we affirm it. We have declined to rule upon his other arguments, as those issues are not properly before us at this time.

JUDGMENT OF ABSOLUTE DIVORCE ENTERED BY THE CIRCUIT COURT FOR CECIL COUNTY ON NOVEMBER 10, 2014, AFFIRMED. APPELLANT TO PAY COSTS.

APPENDIX

Mr. Rafferty's appellate brief included the following questions:

1) Did the trial court judge inappropriately re-enter Rafferty v. Rafferty hearing having previously removed herself from hearing matters in this case? Was re-entering this case conducted in accordance with the MD Code of Judicial Conduct?

2) Did the Cecil County Circuit Court err in its failure to recognize, accept and enforce the valid and legally binding prenuptial agreement between the parties as it applies to:

a) Denying Mr. Rafferty's Motion to Dismiss or Lesser Relief of Change of Venue as a Forum Selection Clause exists in the parties prenuptial agreement and/ or forum non-conveniens?

b) Denial of Summary Judgments as a valid and legally binding agreement exists between the parties and no dispute as to material fact had been raised AND/OR Plaintiff's response did not identify with particularity any material disputes and Defendant was entitled to summary judgments as a matter of law?

c) Denial of Mr. Rafferty's Motion for Contempt of Court/Show Cause order as Mrs. Sweeney filed a petition for limited divorce concealing the existence of the parties prenuptial agreement including a forum selection clause, contains erroneous information and was signed under penalty of perjury?

3) Did the trial court err in denying dismissal of Mrs. Sweeney's motion for absolute divorce?

4) Did the Cecil County Circuit Court err in its denial of Mr. Rafferty's Emergency Exparte [sic] Application's after the flight of Mr. Sweeney from the marital home, jurisdiction and state without permission of the courts absconding the family children to PA? Did the trial court's failure to award exparte [sic] relief allow Ms. Sweeney the opportunity to relocate and establish the conditions necessary to deny Mr. Rafferty fair and equal opportunity for custody?

5) Did the trial court err in restricting access of the family children to maternal family and dictating disciplinary actions legally correct or supported by the facts?

6) Did the trial court err in its decisions to grant a motion for counselling of the marital children without evaluation, corroborating testimony or substantiating evidence legally correct, supported by the evidence, or in the best interest of the children?

7) Did the trial court err in denying exhibits, emails and portions of the parties [sic] prenuptial agreement based solely upon testimony of plaintiff without professional testimony, documentation, proof/validation when testimony was disputed?

8) Was the trial court's decision excluding Mr. Rafferty's witnesses as provided outside of discovery or beyond the date for identification of professional witnesses in the scheduling order, legally correct or supported by the facts?

9) Did the trail court err in denying Mr. Rafferty's continuance of Day 2 of the Pendente Lite hearings? Did the trial court preserve and ensure Mr. Rafferty's rights under Md. Code of Judicial Conduct, 2.2. AND 2.6 right to be heard and/or proceeding without counsel?

10) Did the trial court follow the Md. Rules adhering to mandatory calculations, provision of mandatory information, resulting in awarding an incorrect child support award? Did the trial court err allowing plaintiff to argue for exceptions when Plaintiff failed to file exceptions? The trial court also failed to hold hearings as required on Motions to correct the erroneous child support award.

11) Are the trial courts post-trial prosecution of this case inappropriate?

12) Did the trial court err in awarding numerous attorney's fees?