UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2630

September Term, 2015

MILFORD WASHINGTON

v.

FAYE DENISE LUCAS

Beachley,
Shaw Geter,
Thieme, Raymond, G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 10, 2017

Milford Washington ("Mr. Washington") appeals from a judgment of the Circuit Court for Prince George's County granting an absolute divorce to Mr. Washington and his wife, Faye Denise Lucas ("Ms. Lucas"). Mr. Washington raises a number of issues on appeal, which we have reordered and rephrased:

1. Did the court err in vacating the default judgment entered against Ms. Lucas?
2. Did the court err in denying Mr. Washington's alimony claim?
3. Did the court err in denying Mr. Washington's request for a monetary award related to pre-marital property he claims Ms. Lucas converted?
4. Did the court err in denying Mr. Washington's post-trial motions without a hearing?

We perceive no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were married on December 15, 2004. At the time of their marriage, Mr. Washington was incarcerated in Virginia. According to Mr. Washington, he was incarcerated continuously from April 26, 2004, until March 25, 2015. On April 13, 2015, just weeks after being released from prison, Mr. Washington filed a complaint for absolute divorce in the Circuit Court for Prince George's County. On July 29, 2015, the circuit court issued an order of default against Ms. Lucas due to her failure to file a response to Mr. Washington's complaint. Ms. Lucas timely filed a motion to vacate the order of default.

On the first day of trial, October 29, 2015, the circuit court granted Ms. Lucas's motion to vacate the order of default. The court then received evidence on October 29,

2015, and November 10, 2015, and delivered a bench opinion after closing arguments by the parties. The court issued a Judgment of Absolute Divorce dated November 10, 2015, granting the parties an absolute divorce, but denying Mr. Washington's request for alimony and a monetary award.

Mr. Washington filed separate motions for a new trial, to alter or amend the judgment, and to correct the judgment for clerical error. The court denied the motions for new trial and to alter or amend without a hearing. Apparently, the court never formally ruled on the motion to correct the judgment for clerical error. Mr. Washington timely noted this appeal. We will provide additional facts as needed in the Discussion section.

DISCUSSION

I.

Mr. Washington argues that the circuit court erred when it vacated the order of default that had been entered against Ms. Lucas. On August 26, 2015, Ms. Lucas timely filed her motion to vacate order of default as required by Maryland Rule 2-613(d). Mr. Washington correctly notes, however, that Ms. Lucas's motion to vacate did not certify that she mailed a copy of the motion to him. Prior to the commencement of trial on October 29, 2015, the court permitted both parties to argue Ms. Lucas's motion to vacate order of default. After hearing from the parties, the court vacated the default order, stating,

> But the Court is inclined to always allow both parties to participate, because it benefits the Court in getting all information necessary in order to make fair decisions.

> [The motion to vacate] was filed on August 26 and Mr. Washington fully responded to the motion and, certainly, has not been taken by surprise on that.

As an interlocutory order, an order of default is "subject to revision within the general discretion of the trial court until a final judgment [is] entered on the claim." *Banegura v. Taylor*, 312 Md. 609, 619 (1988). "A trial judge possesses very broad discretion to modify an interlocutory order where that action is in the interest of justice." *Id*. Though Ms. Lucas did not mail a copy of the motion to vacate to Mr. Washington, the court expressly noted that Mr. Washington was not "taken by surprise," and consequently suffered no prejudice. Moreover, the court expressed its desire to allow both parties to participate to enable the court to make a fair decision. The trial judge did what is legally required – she exercised her discretion in vacating the order of default. We see no error.

II.

Mr. Washington devotes most of his brief arguing that the trial court erred in denying his alimony claim. As best as we can glean from Questions three, four and five in his brief (and the corresponding arguments to those questions), Mr. Washington contends that the trial court erred: 1) by not considering all of the factors set forth in Md. Code (1984, 2012 Repl. Vol.), § 11-106(b) of the Family Law Article ("FL"); 2) in failing to ascertain his potential income; 3) by considering evidence of Mr. Washington's abuse of Ms. Lucas's daughter; and 4) in not requiring Ms. Lucas to file a financial statement. We perceive no error in the court's alimony analysis.

We begin our discussion by articulating the appropriate standard of review.

> An alimony award will not be disturbed upon appellate review unless the trial judge's discretion was arbitrarily used or the judgment below was clearly wrong. [A]ppellate courts will accord great deference to the findings and judgments of trial judges, sitting in their equitable capacity, when conducting divorce proceedings. Thus, absent evidence of an abuse of discretion, the trial court's judgment ordinarily will not be disturbed on appeal.

Boemio v. Boemio, 414 Md. 118, 124-25 (2010) (alteration in original) (citations and internal quotations omitted).

Mr. Washington asserts that the court failed to make factual findings as to several of the FL § 11-106(b) factors. The twelve statutory FL § 11-106(b) factors are:

(1) the ability of the party seeking alimony to be wholly or partly self-supporting;
(2) the time necessary for the party seeking alimony to gain sufficient education or training to enable that party to find suitable employment;
(3) the standard of living that the parties established during their marriage;
(4) the duration of the marriage;
(5) the contributions, monetary and nonmonetary, of each party to the well-being of the family;
(6) the circumstances that contributed to the estrangement of the parties;
(7) the age of each party;
(8) the physical and mental condition of each party;
(9) the ability of the party from whom alimony is sought to meet that party's needs while meeting the needs of the party seeking alimony;
(10) any agreement between the parties;
(11) the financial needs and financial resources of each party, including:
    (i) all income and assets, including property that does not produce income;
    (ii) any award made under §§ 8-205 and 8-208 of this article;
    (iii) the nature and amount of the financial obligations of each party; and
    (iv) the right of each party to receive retirement benefits; and
(12) whether the award would cause a spouse who is a resident of a related institution as defined in § 19-301 of the Health - General Article and from whom alimony is sought to become eligible for medical assistance earlier than would otherwise occur.

In *Brewer v. Brewer*, we recognized the trial court's obligation in alimony cases:

> To be sure, the court need not use formulaic language or articulate every reason for its decision with respect to each factor. Rather, the court must clearly indicate that it has considered all of the factors. If the court fails to make clear that it has considered all the factors, then the record, as a whole, must reveal that the court's findings were based on a review of the statutory factors.

156 Md. App. 77, 98-99 (2004) (citations and quotations marks omitted).

In this case, the court considered the enumerated alimony factors to the extent the parties produced evidence as to each of those factors. The court found that Mr. Washington made no non-monetary contribution to the marriage "since he was incarcerated for all of the marriage." As to the circumstances that contributed to the estrangement of the parties, the court noted that Mr. Washington's prison sentence was not the reason for parties' marital estrangement because Ms. Lucas married Mr. Washington when he was in jail. However, the court found that after Ms. Lucas's daughter disclosed sexual abuse against her by Mr. Washington, Ms. Lucas "clearly had no longer any interest and did not maintain contact with him." The court found that the parties were married for eleven years and noted their respective ages. In considering the economic circumstances of the parties, the court found that, by deciding to attend college after his release from prison, Mr. Washington was voluntarily impoverished. The court further noted that Ms. Lucas had struggled financially and pointed out that no evidence was produced regarding her ability to pay support. The court also noted that the parties had not produced any evidence concerning their assets. In that regard, the reasonable inference was that the parties had no substantial assets as Mr. Washington had been recently released from prison and Ms. Lucas testified that she had been homeless during the marriage. Although the court did not expressly address the

parties' standard of living during the marriage, that consideration was essentially irrelevant because the parties never lived together.

We conclude that, under the circumstances of this case, the trial court adequately considered the FL § 11-106(b) factors based on the meager evidence presented. The court clearly articulated its reasons for denying Mr. Washington's alimony claim:

> He would like Ms. Lucas to pay him alimony while he is pursing [sic] his college education and this seems based most substantially on the theory that merely because she's married to him, she owes him a duty of support. That is not the law in the State of Maryland.
>
> The Court finds that the marriage was intact for a mere few months, the purpose of the marriage which occurred some two months before his sentencing seems to have been done primarily to persuade the Court to sentence more leniently and to look at him in a better light.
>
> Mr. Washington has made no monetary contributions during the marriage whatsoever. There is evidence that he was abusive during his relationship with Ms. Lucas, as well as during a more recent cohabitation with Ms. Harris Smith, who was granted a protective order against him.
>
> Mr. Washington is now seeking a college education, which I think is an excellent goal, but it certainly meets the definition of voluntary impoverishment. Ms. Lucas has no obligation to support him while he pursues a successful re-entry plan. Ms. Lucas has testified that she has struggled financially as well during the past 11 years and there's no indication -- there were no questions asked of her regarding her current financial ability to pay.
>
> The mere fact that the parties were married is not a basis for requiring that a spouse supports another after an 11 year separation. While Mr. Washington may be financially impoverished, both due to his Felony conviction and his decision to pursue his educational goals, the Court finds that there is no basis to require Ms. Lucas to support him, even, in fact, if she had the financial ability to do so.

We conclude that the trial court did not abuse its discretion in denying Mr. Washington's alimony claim under the circumstances of this case.

We briefly turn to address Mr. Washington's other arguments related to the denial of his alimony claim. First, the court was not required to establish Mr. Washington's potential income or Ms. Lucas's actual income because the court determined that, under the unusual circumstances of this case, Ms. Lucas would not be required to pay alimony even if she were financially able to do so. That determination was not erroneous. As to the court's finding that Mr. Washington's sexual abuse of Ms. Lucas's daughter was a reason for the estrangement of the parties, we initially note that Mr. Washington did not interpose timely objections to much of this testimony. In any event, the court credited Ms. Lucas's testimony that learning of Mr. Washington's abuse of her daughter was a substantial reason why she stopped visiting Mr. Washington in prison. "A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996) (citations omitted). The court did not err in determining that Mr. Washington's abuse was a cause of the parties' estrangement.

III.

Mr. Washington next contends that the trial court erred by "denying a monetary award for conversion of premarital property" by Ms. Lucas. At trial, Mr. Washington asserted that Ms. Lucas converted personal property that he owned prior to the marriage, including household furnishings, jewelry, clothing, and a 1996 Range Rover. On appeal,

Mr. Washington limits his argument to Ms. Lucas's alleged conversion of the Range Rover. Ms. Lucas vehemently denied possessing or converting any of Mr. Washington's personal property. At trial, Ms. Lucas specifically addressed the Range Rover:

> As far as the Range Rover, that was used during the commission of one of his crimes in Alexandria. So I definitely did not have that. The police actually came to my job when he was incarcerated and asked me where was the Range Rover and I told them I had no clue. He committed a crime with the Range Rover.

The court resolved the conflicting evidence in favor of Ms. Lucas:

> [M]r. Washington has been convicted of committing fraud, which makes him a witness whose testimony is highly unreliable. The Court -- so, in addition to his testimony, the Court has to find something that would be an indication that what he's testifying to is the truth. And this is property that he says he owned, money that he had before the marriage.
>
> This Court finds no credible evidence to establish that Ms. Lucas ever had any money or assets given to her by Mr. Washington.

As the trier of fact, the court was well within its authority to credit Ms. Lucas's testimony – and discredit Mr. Washington's testimony. The court's determination that Ms. Lucas did not convert the Range Rover is not clearly erroneous. *Lemley*, 109 Md. App. at 628.

IV.

Finally, Mr. Washington asserts that the trial court erred "when it denied Appellant's motions to Alter and Amend for New Trial [sic] and Correct Clerical Error without a hearing which was required by Maryland Rule 2-311(f)." Mr. Washington's post-trial motions are styled as follows: "Motion for New Trial Hearing Pursuant to Rule 2-533," "Motion to Alter or Amend a Judgment Pursuant to Rule 2-534," and "Motion to Correct Clerical Error" pursuant to Rule 2-535(d). We commend Mr. Washington for his

clarity – he cited the correct Maryland Rule for each corresponding motion. We disagree, however, with Mr. Washington's contention that Maryland Rule 2-311(f) is applicable to his motions to alter or amend and for new trial. The applicable rule is Maryland Rule 2-311(e), which provides:

> (e) **Hearing -- Motions for Judgment Notwithstanding the Verdict, for New Trial, or to Amend the Judgment.** When a motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the court shall determine in each case whether a hearing will be held, but it may not grant the motion without a hearing.

Subsection (e) could not be clearer. A hearing is required when the court *grants* a Rule 2-532, 2-533, or 2-534 motion; otherwise the decision to hold a hearing is discretionary. *See Miller v. Mathias*, 428 Md. 419, 438 (2012). The trial court here did not abuse its discretion when it denied Mr. Washington's Rule 2-533 and 2-534 motions without a hearing.

Mr. Washington is correct, however, that Rule 2-311(f) applies to his motion to correct the judgment for clerical error. We note that Mr. Washington did not comply with the requirement in Rule 2-311(f) that the party "shall request the hearing in the motion under the heading 'Request for Hearing.'" Ignoring that procedural defect, our review of the record reveals that the court never ruled on the motion to correct the judgment for clerical error. However, the basis for the motion is that the clerk should not have accepted Ms. Lucas's motion to vacate order of default because the motion did not contain a certificate of service. As discussed in Section I. of this opinion, this precise issue was addressed – and rejected – by the trial court on October 29, 2015. Because the issue raised in Mr. Washington's "motion to correct clerical error" was decided on October 29, 2015, we see no purpose in a remand to the circuit court for reconsideration of that issue.

JUDGMENT OF CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY COSTS.