Circuit Court for Montgomery County
Case No. 118756C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2273, 529

September Terms, 2016, 2017

CRYSTAL RANDALL

v.

STATE OF MARYLAND

Nazarian,
Shaw Geter,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Davis, J.

Filed: January 4, 2018

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a trial on August 12–14, 2013, Appellant, Crystal Randall, was tried and convicted by the Circuit Court for Montgomery County (Boynton, J.) of theft between $10,000 and $100,000 and embezzlement for retaining approximately $80,000, the proceeds of the sale of her deceased aunt's house. On October 17, 2013, Appellant was sentenced to 10 years' imprisonment, with all but 18 months suspended, five years' probation and she was ordered to pay $80,104.59 in restitution.

On July 7, 2016, Appellant agreed to the sale of her home to bring her restitution payments current, rather than have a 10-year prison sentence imposed. On July 29, 2016, Appellant filed a Motion for Appropriate Relief, which was denied at a subsequent hearing on December 16, 2016. Appellant filed a Notice of Appeal.

On January 17, 2017, the circuit court appointed John Monahan as trustee to sell the home and, on April 25, 2017, Monahan's motion to change the locks to Appellant's residence was granted. Appellant filed another Notice of Appeal, which led to the consolidated appeals now before this Court, wherein Appellant posits the following questions for our review:

1. Did the lower court err by ordering the sale of Appellant's home, without a finding of a violation of probation, where the home was also owned by her husband and located in Arizona?

2. Did the lower court err by excluding Appellant from her home by ordering the locks changed?

FACTS AND LEGAL PROCEEDINGS

Background

The following factual background is excerpted from *Randall v. State*, 223 Md. App. 519, 528 (2015), an appeal from the circuit court action that undergirds the instant case.

> In 2009, Alma Matthews Lynch—a Montgomery County, Maryland resident—passed away, leaving a will devising, among other things, real property located in Arizona to the beneficiaries of her residuary estate. As designated under the will, the Register of Wills for Montgomery County appointed Ms. Lynch's niece, Appellant Crystal Hayslett Randall, and Ms. Lynch's partner, Clifton Terry, as co-personal representatives of the estate. These appointments proved ill-fated. Appellant, an Arizona resident, sold the Arizona property, failed to account for the sale within the Maryland Estate, and took the lion's share of the proceeds for herself.

With the proceeds,[1] Appellant purchased a property located at 2613 East Jessica Lane in Phoenix, Arizona. The property was in the names of Appellant and her husband. The sale price was $60,000 and it was a cash only transaction, without financing. *See Randall*, 223 Md. App. at 532–36.

> A Montgomery County grand jury indicted Appellant for embezzlement and theft on July 21, 2011. The following day, the Circuit Court for Montgomery County

[1] *Randall v. State*, 223 Md. App. 519, 533, 536 (2015) ("Bank records reflect that, on the day of the settlement, [December 21, 2010,] all proceeds from the sale—$90,960.30—were wire-transferred to M & I Bank in Arizona and deposited into a checking account that Appellant had previously opened in the 'name of Alma M. Lynch Estate. Crystal L. Hayslett, personal representative.' *** Appellant was the only person authorized to conduct transactions relating to this account, and she immediately made two withdrawals: one in the amount of $74,734.88 and another for $1,000.00. With the larger withdrawal, Appellant purchased certified checks and then issued two certified checks to herself in the amounts of $64,000.00 and $1000.00. *** Meanwhile, by a warranty deed created on January 5, 2011 and recorded on January 20, 2011, Appellant and her husband purchased another property located at 2613 East Jessica Lane, Phoenix, Arizona for the sale price of $60,000.00 The transaction was a full-cash purchase without financing.").

> issued a bench warrant. The Sheriff's Office entered the warrant into a national database, but efforts to confirm Appellant's address in Arizona delayed her arrest until December 7, 2012.
>
> After several failed attempts to fight her extradition to Maryland, Appellant filed a motion to dismiss alleging denial of her right to a speedy trial. The circuit court denied that motion after holding a hearing. Additionally, before trial and then during her motion for acquittal, Appellant challenged the State of Maryland's jurisdiction to prosecute the charges filed against her, contending that jurisdiction existed in Arizona where the alleged crime occurred. The circuit court denied the motion for acquittal, concluding that Appellant had a duty to account for the proceeds to the Maryland estate and that the effect of the crime was felt in Maryland. At the close of her trial on August 14, 2013, the jury convicted Appellant of both charges[.]

Id. at 528–29.

Sentence

On October 17, 2013, Judge Boynton, imposed a sentence of 10 years' incarceration, all but 18 months suspended, five years' probation and ordered $80,104.59 in restitution, concluding that was the total amount of the theft. A civil judgment in that amount was also entered on the judgment index. At that time, the court did not establish any schedule of payments for the restitution. However, the probation order that Appellant signed, required her to pay the restitution "as ordered by the court or as directed by your supervising agent through a payment schedule." The supervising agent created a payment schedule, whereupon Appellant would be required to pay $1,400 per month for the duration of her probationary period. Appellant's place of residence was Arizona; therefore, her probation was transferred there so that she could be supervised by an Arizona probation agent.

At a hearing on February 11, 2014, Judge Boynton denied Appellant's Motion to

Reconsider her sentence. Appellant indicated that she was unsure of the status of her real estate license and that she wanted to go to culinary school and obtain employment as a chef. The court expressed concern that her real estate license might be suspended or revoked when her conviction was discovered. The court later said it doubted "highly"' that Appellant would be able to get back into real estate.

On May 25, 2016, a violation of probation hearing was scheduled for failing to pay restitution as required. Appellant did not appear and she was subsequently arrested in Arizona and brought to Maryland on May 31, 2016. Appellant remained in jail until another hearing was held on July 7, 2016. At the time of the hearing, Appellant had paid less than $600 toward her restitution obligation, failing to meet the required monthly amount set by her supervising probation agent.

In support of the petition for violation, the State noted that Appellant had used the proceeds to purchase a residence in Arizona for $60,000 cash. Appellant's Counsel, however, noted that Appellant made $900 after taxes "on a good month," that probation was costing her in excess of $1,400 per month, that she was paying $20 to $50 per month and that, at the time of the hearing, Appellant had been incarcerated 38 days. Counsel also said that Appellant was taking classes, had found a job as a prep chef and that a majority of the beneficiaries of the Estate had written to say that they did not want her to be incarcerated. The court asked why Appellant had not "sold the house to pay the restitution back?" Counsel responded that she would still need to live somewhere and that her expenses were already higher than her income. The court stated that she could make "a

huge impact immediately" on the restitution if she sold the Arizona property. The court also stated that the sentence it had imposed on Appellant had been based on "her offer to make sizable payments per month" based on her employment as a real estate broker.

After a recess, the court reiterated its concern that Appellant had only made $600 in restitution payments and that she was living in a house that she purchased for cash after selling the house from the estate of her aunt. Recounting the procedural history, the court observed:

> All right. So I guess we are here at a situation where at the time of sentencing the defendant was sentenced to a brief term of incarceration with suspended time and was directed to pay restitution. That was almost three years ago, two years and nine months ago. She's now made about $600 of payments out of $90,000.
>
> And, I guess the most concerning thing is the fact that she has the ability to make some substantial restitution payments in this case, and she's choosing not to. Instead, she's working a number of hours per week, and she's sending $20.00 or $25.00 per month when the record clearly shows that the fact that she has the ability to make some substantial restitution payments in this case, and she's choosing not to. Instead, she's working a number of hours per week, and she's sending in $20 or $25 per month when the record clearly shows that, as a result of her criminal activity, he sold the house that was part of the estate of her aunt. And rather than debiting it to the rightful heirs, she took the cash and she purchased the house for cash. That's where she now lives.
>
> So clearly, she has the ability to pay restitution, if not in full, substantial amounts. But she is now choosing not to because she's choosing not to sell the asset which is the object of her ill-gotten gains.
>
> So I guess the question now becomes whether or not she wants to sell the house and make restitution, or whether she wants me to simply impose the sentence and issue a judgment, and have the parties go on with their life [sic], so.

Appellant's counsel responded that Appellant "would be willing" to sell the house. Counsel, noting that the house is titled in both Appellant's and her husband's names,

counsel added:

> So that ties our hands our hands a little bit. I would ask you to consider setting a hearing six months from now releasing Ms. Randall, obviously, to go back to work and school, with the instruction that she, as part of her probation, she needs to sell the house for restitution. And perhaps her probation officer in Arizona, since the State has contact with her, can be told of the situation and make sure that that process is occurring.

In response to the court's suggestion that a timeline be established during which the house would be listed for sale within 30 days and so within six months, Appellant asked the court to allow time to make repairs to the house and asked that the State withdraw its petition for violation. The proposal was accepted by the court, allowing 30 days for repairs to be made and 60 days for the house to be listed for sale. The court, based on Appellant's agreement to the above-cited terms, accepted the proposal of Appellant's counsel, allowing 30 days for repairs to be made and 60 days for the house to be listed for sale. The court then drafted a new contract, based on these new terms, which Appellant signed. It stated, "Defendant shall sell property at 2613 East Jessica Lane, Phoenix Arizona 85040; the proceeds to go towards restitution; 8/5/16 repairs and receipts; 9/2/16-list home and copy of list agreement; 1/6/17-repairs and receipts; 9/2/16 receipts; 9/2/16-list home and copy of list agreement; 1/6/17 attend review hearing."

On July 29, 2016, Appellant's counsel filed a Motion for Appropriate Relief, arguing that Appellant still had three years to pay her restitution, that the court had no authority to order the sale of the subject property, that her husband's name, Herman Randall, was on the deed for the house and that he was unwilling to sell. In an

accompanying memorandum of law, counsel argued that Appellant had not violated her probation and should not have been forced to agree to sell the house or face jail time.

On December 16, 2016, at a hearing for the Motion for Appropriate Relief, it was determined that, although Appellant had paid $1,150 towards her restitution obligation in the interim, no concrete efforts to sell the Arizona property had been made. Based on Appellant's failure to make efforts to sell the home, pursuant to the July 7, 2016 contract, the court appointed a trustee to sell the property. Appellant presented a letter from Mr. Randall to the effect that the property "is community property with full rights of survivorship," that he contributed to the purchase of the home and that he did not want to sell it. The court opined that, if Mr. Randall wanted to claim that he was entitled to half, "a judge in Arizona could deal with the matter."

Appellant filed two notices of appeal. On December 29, 2016, Appellant appealed the denial of the Motion for Appropriate Relief. On January 10, 2017, Appellant appealed the Order, stating that it produced an illegal sentence. Both appeals were docketed as *Randall v. State*, Sept. Term 2016, No. 2273.

On January 17, 2017, the court issued an Order appointing John Monahan as trustee and authorizing him to sell the Arizona property. The Order claimed that Mr. Randall had "no claim or interest in the home" because "he attended the trial and was aware of the misappropriation of funds by his wife and contributed no funds of his own to the purchase of the home."

On January 30, 2017, Appellant filed a Motion to Stay Execution of Restitution

Order for Forced Forfeiture of Estate Pending Outcome of Appeal and Post-Conviction Proceedings. The motion was denied.

On March 31, 2017, at a review hearing, the trustee indicated that he had attempted to contact Appellant to obtain the keys to the Arizona property to begin the process of selling it, but that Appellant had refused to comply. Because of Appellant's refusal to provide the trustee with the keys, he was unable to list the property and unable to formally retain a real estate agent. Appellant continued to refuse to provide the keys at the hearing.

On April 4, 2017, the trustee filed a Motion for Authority to change the locks on the home, which the court granted on April 26, 2017.

On May 2, 2017, Appellant filed a Notice of Appeal from the court's Order giving the trustee the authority to change the locks on the property. This appeal was docketed as *Randall v. State*, Sept. Term 2017, No. 529.

On August 4, 2017, this Court ordered the two appeals, discussed, *supra*, to be consolidated for purposes of briefing and argument.

DISCUSSION

I.

A.

Appellant first contends that the lower court erred by ordering her to sell her home because it constituted an illegal condition of probation. Appellant asserts that there was no "statutory authority" to order the sale of her home to pay for restitution, particularly when there was no finding that she was in violation of her probation. Appellant further asserts

that she could not violate her probation by falling behind on a restitution payment schedule created by the Division of Parole and Probation ("DPP"), as opposed to a schedule created by the court. Additionally, Appellant does not contest that she consented to the order to sell her home and signed a new contract with the court to its effect; however, Appellant maintains that she did so only because the court threatened to revoke her probation and reinstate her sentence of incarceration.

The State first responds that the court's order directing that Appellant sell her home in order to bring her restitution payments current was appropriate. The State asserts that Appellant consented to the order to sell her home and that it "was reasonable and rationally related to the offenses that she committed." The State alleges that Appellant had the ability to pay restitution consistent with her obligations because the house in question was purchased for $60,000 cash with the misappropriated proceeds from the Estate.

Furthermore, the State responds that there is Maryland authority to order the sale of a home to bring restitution payments current. Although the State concedes that "certain types of probationary conditions are improper because they exceed statutory authority[,]" the State maintains that, "Maryland courts have regularly sanctioned conditions of probations for which there has been no express approval in the Maryland Code." The State also asserts that Appellant's consent was valid; Appellant "has advanced no authority stating that a probationer may not agree to additional conditions of probation so as to avoid being found in violation of probation and avoiding incarceration."

Finally, the State responds that, "[b]y expressly permitting her probation agent to

establish a payment schedule, the Probation Order allowed the payment schedule ultimately adopted to be incorporated as a viable condition of her probation." The State avers that "any failure to comply with that payment schedule . . . constituted a violation of her probation."

Md. Code Ann., Crim. Proc. ("C.P.") § 6–221 governs the suspension of a sentence and the imposition of probation. The statute provides, in its entirety, that, "[o]n entering a judgment of conviction, the court may suspend the imposition or execution of sentence and place the defendant on probation on the conditions that the court considers proper."

One such condition of probation can be a "judgment of restitution," as embodied in C.P. § 11–604(g).

> In Maryland, restitution may be ordered, with qualifications, as a direct sentence for a crime or delinquent act, in addition to any other penalty prescribed by the underlying sentencing or remedial statute. § 11–603(a). Sentencing courts also may order restitution under the broader powers of probation after conviction, "the court may suspend the imposition or execution of sentence and place the defendant on probation on the conditions that the court considers proper." § 6–221. We previously commended the use of restitution as a condition of probation: "[a] court which orders restitution does a certain solomonic justice for the aggrieved victim who is entitled to requittal of that unlawfully taken or reparation for injury criminally inflicted; thus, restitution as a probationary tool has an understandable appeal."

Pete v. State, 384 Md. 47, 55 (2004) (citations omitted).

"Yet, the broad power to order conditions of probation under § 6–221 is not boundless." *Pete,* 384 Md. at 55. "One such limitation is that the conditions of probation must be reasonable and *have a rational connection to the offense*." *Meyer v. State*, 445 Md. 648, 680 (2015) (emphasis supplied) (citation omitted).

> [P]robation is not a matter of entitlement, but rather, it is a form of punishment that allows an offender to retain his or her liberty. Therefore, a defendant may be required to comply with a standard of conduct that limits his or her liberties to help the defendant avoid incarceration, become a productive member of society, and promote public safety.

Meyer, 445 Md. at 680 (citations omitted).

"A probationer is entitled to retain his liberty as long as he substantially abides by the conditions of his probation. Probation may not be revoked unless the probationer has in fact acted in violation of one or more conditions of his probation." *Humphrey v. State*, 290 Md. 164, 167 (1981) (citations omitted).

> Generally, before probation may be revoked the State must prove that the probationer has not complied with one or more lawful conditions of probation. Even then, ordinarily probation may not be revoked if the probationer proves that his failure to comply was not willful but rather resulted from factors beyond his control and through no fault of his own.

Humphrey, 290 Md. at 167–68.

In *Smith v. State*, 306 Md. 1, 8 (1986), the Court of Appeals held that the accused's failure to make restitution payments could not be a basis, in that case, for a revocation of his probation.

> The record discloses . . . that Smith had been imprisoned for all but a few months throughout his probationary period and was unemployed during the short time that he was free. Under these circumstances, Smith's failure to pay restitution and court costs, without more, cannot be characterized as wilful [sic] and cannot properly serve as a basis for the revocation of his probation.

Id.

> [I]n revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay. If the probationer willfully

> refused to pay or failed to make sufficient *bona fide* efforts legally to acquire the resources to pay, the court may revoke probation and sentence the defendant to imprisonment within the authorized range of its sentencing authority. If the probationer could not pay despite sufficient *bona fide* efforts to acquire the resources to do so, the court must consider alternate measures of punishment other than imprisonment. Only if alternate measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient *bona fide* efforts to pay. To do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment."

Id. at 9–10 (quoting *Bearden v. Georgia*, 461 U.S. 660, 672–73 (1983)).

"Restitution, whether ordered as a condition of probation or entered as part of the judgment of conviction, is a criminal sanction that can be challenged as an illegal sentence." *Lindsey v. State*, 218 Md. App. 512, 539 (2014), *rev'd sub nom on other grounds*, *Griffin v. Lindsey*, 444 Md. 278 (2015). "Because restitution statutes are penal in nature, they must be strictly construed." *McCrimmon v. State*, 225 Md. App. 301, 307 (2015). However, a judgment of restitution "may be enforced in the manner that a civil judgment may be enforced[.]" *Grey v. Allstate Ins. Co*., 363 Md. 445, 451 (2001).

In the instant case, Appellant contends that there is no Maryland statutory authority for the court to order the sale of Appellant's home to pay restitution. The inquiry in the instant case would be different if the court had, *sua sponte*, ordered the sale of Appellant's home to pay restitution. Appellant, however, overlooks two key facts. First, Appellant initially consented to the sale of her home. Second, the sale of the home was not ordered to satisfy her restitution obligation; rather, it was ordered, after Appellant consented, to bring restitution payments *current*. After two years and nine months of a five year

probation, Appellant had only paid a total of approximately $600 on the $80,000 restitution ordered, after consenting to a DPP payment plan of $1,433 a month.

Appellant cites *Edwards v. State*, 67 Md. App. 276 (1986) as support for her argument that probation cannot be violated for failure to make payments on a scheduled plan created by the DPP; however, she mischaracterizes the holding in *Edwards.* In that case, this Court reiterated that

> [w]here a judge grants probation subject to fulfillment of general or special conditions, the Division, "in furtherance of its supervisory role to assure compliance, may provide specific rules designed to govern the conduct of the probationer within the ambit of the condition." *It may not, however, impose new, more onerous conditions of its own that are not fairly within the ambit of those laid down by the court*.

67 Md. App. at 281 (emphasis supplied) (citing *Costa v. State*, 58 Md. App. 474, 482 (1984)).

In *Edwards*, the probationer was given one year to complete his restitution payments. The Division placed new and more onerous conditions upon him requiring that the restitution be fully paid off *before* the year ended. As the record reflects, in the case *sub judice*, the DPP did not impose new and more onerous conditions on Appellant's probation; rather, the DPP created the payment plan, pursuant to which Appellant agreed to make monthly payments. As Appellant failed to make those monthly payments after two years and nine months into her probationary period, Appellant had violated the conditions of her probation.

Furthermore, *apropos Smith, supra*, the trial court clearly inquired into the *bona fide*

ability of Appellant to pay her restitution. The trial court reiterated that the restitution, as a condition of probation, was initially agreed upon because Appellant maintained she possessed a broker's license and would work as a real estate agent, thereby enabling her to make timely payments. Subsequently, her prognostication turned out not to be possible and Appellant had sought schooling and work as a cook. Furthermore, it bears repeating, that the court did not order the sale of Appellant's home after a few missed monthly payments. The court did not order the sale of Appellant's home, to which she consented, until two years and nine months, or after half of the probationary period had passed and Appellant had only paid $600 total on the $80,000 restitution ordered.

Therefore, we hold that the lower court did not err in ordering Appellant to sell her Arizona residence and the order was not an illegal condition of probation.

B.

Appellant next contends that the lower court erred in ordering her Arizona residence sold because the house was "community property," and, therefore, even if the court had authority to force her to sell her home, it lacked the authority to force Mr. Randall to sell the home, which he owned jointly.

Citing the Arizona Homestead Exemption Act ("AHEA"),[2] Appellant further alleges that the lower court had no authority to force the sale of a home located in Arizona because the AHEA "affords . . . citizens special statutory protection of their homestead

[2] Ariz. Rev. Stat. (West 2017) §§ 33-1101–33-1153.

property against the threat of creditors, judicial process and other forfeitures[.]"

The State does not respond directly to Appellant's claim that the Arizona property's status is "community property." In a footnote discussing the second claim, *see infra,* the State notes that, after the first claim, "[a]ll other claims . . . are not properly before this Court because they are not appealable orders." However, in its analysis regarding the appealability of the orders, the State does not discuss the status of the property as "community property" or the role, *vel non*, that the AHEA plays in the instant appeal.

According to Arizona law, "all property acquired during marriage, except that acquired by gift, devise or descent, is presumed to be community property." *Am. Exp. Travel Related Services Co. v. Parmeter*, 925 P.2d 1369, 1370 (Ariz. Ct. App. 1996). *See also* ARIZ. REV. STAT. ANN. ("ARS") § 25-211.

"Similarly, '[a] debt incurred by a spouse during marriage is presumed to be a community obligation.'" *Parmeter*, 925 P.2d at 1371 (quoting *Hrudka v. Hrudka*, 186 Ariz. 84, 919 P.2d 179, 186–87 (App.1995)). Specifically, Arizona "case law has recognized community liability for the fraud of one member." *Cadwell v. Cadwell*, 616 P.2d 920, 923 (Ariz. Ct. App. 1980) (citing *Reese v. Cradit*, 469 P.2d 467 (1970)).

> To the extent that the community benefited from criminal acts of [one spouse] which were intended by her to benefit the community, so that [the other spouse] was benefited *even though he was without knowledge of the acts or the criminal character thereof*, [his] share of the community estate thus enhanced would be liable.

Id. (Emphasis supplied). Embezzlement is a form of fraud. *Id.*

ARS § 33-1101(a) provides that

> [a]ny person the age of eighteen or over, married or single, who resides within the state may hold as a homestead exempt from attachment, execution and forced sale, not exceeding one hundred fifty thousand dollars in value, any one of the following: 1. The person's interest in real property in one compact body upon which exists a dwelling house in which the person resides . . . ."

§ 33-1101(c) provides that

> The homestead exemption, not exceeding the value provided for in subsection A, automatically attaches to the person's interest in identifiable cash proceeds from the voluntary or involuntary sale of the property. The homestead exemption in identifiable cash proceeds continues for eighteen months after the date of the sale of the property or until the person establishes a new homestead with the proceeds, whichever period is shorter.

In the instant appeal, Appellant argues that the lower court could not order the Arizona property sold because the property was titled in Mr. Randall's name as well as Appellant's. Appellant, however, asserts that he could have helped pay for it. As the lower court noted, the record supports the inference that Appellant paid for the house largely, if not solely, from the embezzled proceeds of the estate. Within a week of withdrawing the balance of the proceeds in the bank account designated to hold the proceeds for the estate, Appellant and her husband had purchased the Arizona property in question. The sale price for the property was $60,000. There was no financing for the property; it was a full-cash purchase. The amount of one of the certified checks that Appellant made to herself from the estate's bank account was $64,000.00. The purchase of the property immediately followed the foreclosure of the previous residence of Mr. and Mrs. Randall.

Furthermore, at the time of violation of probation hearing, Appellant's husband was not living in the house. Mr. Randall attended the trial and was fully aware of Appellant's

convictions. After her violation of probation hearing in July 2016, Mr. Randall moved into the property and began paying bills related to the house. Appellant attributed her husband's move back into the residence as one of the reasons why she could begin making monthly payments toward her restitution obligation, albeit, less than the agreed-upon repayment schedule created by the DPP. It was after Mr. Randall moved back into the Arizona property that he refused to sell the home in compliance with the circuit court's order. Therefore, we are persuaded that Mr. Randall's involvement is not with clean hands.

Even if Appellant's version of the facts are true, *i.e.*, that the Arizona residence is indeed community property, that Mr. Randall contributed to the sale of the Arizona residence and that he had no prior knowledge of Appellant's fraud and embezzlement, the lower court could still order the sale of the property. As *Caldwell, supra*, instructs, Mr. Randall's share in the community property is liable even when he unknowingly benefitted from Appellant's criminal acts, *i.e.*, embezzling proceeds from her Aunt's estate to purchase the home.

We also agree with the lower court's ruling that, if Mr. Randall contests applying the full proceeds of the sale of the Arizona residence toward Appellant's restitution obligation, then he is free to pursue a possible claim in the State of Arizona. However, that does not prohibit the Circuit Court for Montgomery County from ordering the sale of the property, purchased with embezzled funds, to make the victims of the crime whole again.

II.

Appellant's final contention is that the lower court erred by "excluding" Appellant

from her home *via* a lock-change order. Appellant argues that this change of probation condition amounted to "banishment" and is, therefore, illegal. Appellant also argues that the orders mandating the sale of her home and her exclusion due to the lock change are appealable final orders.

The State responds, in a footnote, that Appellant's claims, concerning the court's order, or the trustee's authority to change the locks to Appellant's house are not appealable orders. The State first argues that "the orders relate only to an authority not yet exercised and, therefore, do not settle the rights of Randall vis-à-vis her property, the orders are not final judgments appealable under § 12–301 of the Courts and Judicial Proceedings Article."

The State also argues that Appellant's claims are not appealable under the collateral order doctrine. The State avers that, "because the circuit court's orders do not conclusively determine or resolve the disputed questions, and would be reviewable should the trustee seek to exercise his authority, the orders fall outside of the collateral order doctrine." Specifically, the State argues that "any action to effectuate the authority of the trustee would require a separate civil action in Arizona." The State notes that Appellant, herself, acknowledged this to be true. The State further argues that, "[s]hould such an action ever be filed (which it appears has not occurred), Randall (and her husband) would have a full and adequate opportunity to contest, in that matter, on the grounds she seeks to assert here, the trustee's authority to change the locks and sell her house[.]"

As a preliminary matter, we address the State's contention that Appellant's claim is not appealable as a final judgment or under the collateral order doctrine.

Md. Code Ann., Cts. & Jud. Proc. § 12-301 provides that

> a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law. In a criminal case, the defendant may appeal even though imposition or execution of sentence has been suspended.

"[A]n appeal generally must be taken from a final judgment; the decision must be 'so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.'" *Quillens v. Moore*, 399 Md. 97, 115 (2007) (citations omitted).

> To qualify as a final judgment, an order "must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding," and must, ordinarily, satisfy three criteria:
>
>> (1) [I]t must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2–602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2–601.

Miller & Smith at Quercus, LLC v. Casey PMN, LLC, 412 Md. 230, 242–43 (2010) (citations omitted).

In the instant case, the trustee, John Monahan, filed a motion, in the Circuit Court for Montgomery County, for authority to change the locks on the Arizona property. The circuit court granted the motion on April 25, 2017. Appellant filed a motion in opposition on April 26, 2017 and a notice of appeal on May 2, 2017.

In *Russell v. State*, 221 Md. App. 518 (2015), we held that, when a circuit court's

order, that modifies the terms of probation, satisfies all the requirements of a final judgment, it may be reviewable as such. We reasoned as follows:

> The circuit court's order was clearly intended by the circuit court judge to be a final resolution of the State's motion to modify the conditions of Russell's probation. There is no indication that the terms of Russell's probation would be reconsidered at any future time. We do not believe that there was "any further order . . . to be issued" or "any further action . . . to be taken" with respect to Russell's probation.

Russell v. State, 221 Md. App. 518, 526 (2015), *cert. granted*, 443 Md. 234 (2015), *and appeal dismissed*, 443 Md. 734 (2015).

We agree with Appellant that the court's order granting the trustee's motion to change the locks constitutes a final judgment. As Appellant notes, the order "concluded the rights of the parties involved and left Appellant without the ability to prosecute or defend her rights—once she is excluded from her home and it is sold, she will have no recourse." Although the State alleges that Appellant could seek recourse in Arizona State court, we are unpersuaded. The trustee, acting under the authority of the Circuit Court for Montgomery County, was appointed by the court and filed his motion in Montgomery County. To assume that Appellant could seek appropriate redress for the order in Arizona infers that the Arizona State Court System also has authority over the trustee and order, which is incorrect. Therefore, we hold that the order is appealable as a final judgment.

However, we are unconvinced by Appellant's claim that the order to change the locks of her Arizona property constituted a condition of probation that amounted to an illegal "banishment."

"[T]he texts are in accord with the more recent weight of authority holding that a

sentence of banishment or the suspension of a sentence conditioned on banishment is void." *Bird v. State*, 231 Md. 432, 438 (1963). The Supreme Court has defined banishment as "'a punishment inflicted upon criminals, by compelling them to quit a city, place, or country, for a specific period of time, or for life." *United States v. Ju Toy*, 198 U.S. 253, 269–70 (1905) (Brewer, J., dissenting) (quoting *Black's Law Dictionary*)

Today, Black's Law Dictionary (10th ed. 2014) does not directly define "banishment" or "banish," but references "exile" instead, defining that term as follows:

> exile n. (14c) 1. Expulsion from a country, esp. from the country of one's origin or longtime residence; banishment.
> - forced exile (17c) Compelled removal or banishment from one's native country.
> 2. Someone who has been banished. 3. A prolonged voluntary absence from one's home country. — exile, vb.

Appellant cites *Bird, supra*, which considered banishment from the state, and *Finnegan v. State*, 4 Md. App. 396, 404 n. 3 (1968), which cites *Bird*. Obviously, deportment from the state is not at issue in this case. Appellant also cites foreign law which discusses prohibition of a probationer from entering specified areas of a city. *In re White*, 97 Cal. App. 3d 141, 141–51 (Cal. Ct. App. 1979). This too, is not the case at issue.

Appellant cites *Peratrovich v. State*, 903 P.2d 1071, 1079 (Alaska Ct. App. 1995), which discusses the prohibition of the defendant from an island after his conviction for sexual molestation of his granddaughter. The Alaska Court of Appeals held that the trial court erred because the defendant's home was located on the island and the condition violated his right to property, travel and association without considering less onerous restrictions, *e.g.*, defendant could not be present in the company of a minor without the

presence of another adult.

Although this case comes closer to the mark, in that it concerns property, it is also inapplicable to the instant appeal. The instant case is not one where the circuit court could consider a less onerous restriction; Appellant consented to the sale of her home to bring her restitution obligation current, but then refused to cooperate by handing over her keys. Patently, in order to effect the sale of the property, the trustee required access to the residence. Appellant was given multiple opportunities to hand over the keys or otherwise cooperate with the circuit court and the trustee. Ultimately, the order was issued to enforce the sale of the property.

In sum, we are unpersuaded that the order amounted to banishment and, therefore, an illegal condition of probation.

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