

Circuit Court for Prince George's County
Case No. CAD 15-10403

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2488

September Term, 2016

DOROTHY MAE WASHINGTON

v.

ROLLIE JAMES WASHINGTON

Wright,
Beachley,
Fader,

JJ.

Opinion by Beachley, J.

Filed: January 23, 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.

Appellant, Dorothy Mae Washington (“Dorothy”), appeals the decision of an in banc panel of the Circuit Court for Prince George’s County which effectively vacated the trial court’s determination concerning the ownership of real property acquired during Dorothy’s marriage to appellee, Rollie James Washington (“Rollie”). Specifically, the in banc panel determined that, because the parties’ home in Upper Marlboro was marital property, the trial court erred by failing to consider the factors relevant to a monetary award enumerated in Md. Code (1984, 2012 Repl. Vol.) § 8-205(b) of the Family Law Article (“FL”). Accordingly, the in banc panel remanded the case “for a full hearing only as to the issue of marital property.”

We consolidate Dorothy’s three questions on appeal into one:¹ Did the trial court err in ruling that Dorothy was the sole owner of marital property without considering the factors enumerated in FL § 8-205(b) pertinent to a monetary award? We answer “No” to this question, reverse the judgment of the in banc panel, and reinstate the judgment of the circuit court.

¹ Dorothy presented the following three questions for our review:

1. By not appearing at the merits hearing, did [Rollie] fail to preserve objections to the evidence, testimony and the trial court’s factual findings for [Rollie’s] in banc appeal?
2. Was the trial court’s dismissal of [Rollie’s] counter-complaint proper?
3. Was the decision of the in banc panel to remand the case to the trial court in error?

FACTUAL AND PROCEDURAL BACKGROUND

The parties married on December 25, 1968. On April 1, 2015, Dorothy filed a complaint for absolute divorce in the Circuit Court for Prince George's County, alleging that the parties had been voluntarily separated since January 1, 2009. Rollie filed an answer to Dorothy's complaint, as well as his own counter-complaint for absolute divorce.

The circuit court, Judge Cathy H. Serrette, presiding, held a merits hearing on November 23, 2015, at which Dorothy and her counsel appeared. Rollie failed to appear for that hearing. Dorothy was the only witness to testify about the disputed real property; the only other witness to testify merely corroborated the grounds for absolute divorce. Two exhibits were admitted during Dorothy's testimony: 1) a Joint Statement of Parties Concerning Marital and Non-Marital Property (the "Rule 9-207 Statement"); and 2) a Quit Claim Deed purporting to transfer real property identified as 10706 Westphalia Road, Upper Marlboro, Maryland, 20772 (the "Property") from Rollie to Dorothy for \$150,000 in monetary consideration.² According to Dorothy, Rollie transferred the Property to her in 2010 because the Property was scheduled for a tax sale due to unpaid real estate taxes. Although Dorothy claimed the Property to be non-marital property in her Rule 9-207 Statement, at trial she simply requested the court to "declare that the real property located

² Dorothy and Rollie apparently executed a Promissory Note and Security Agreement requiring Dorothy to pay Rollie \$150,000 and granting Rollie a security interest in the Property. The Promissory Note and Security Agreement was apparently not entered into evidence at the hearing.

at 10706 Westphalia Road be titled in [Dorothy's] name and that the parties otherwise keep whatever assets that they currently have.”

In her bench opinion, Judge Serrette initially noted that, because the Property was acquired during the parties' marriage, “it is indeed marital property, for what it's worth.”

Judge Serrette then stated:

The fact is . . . that there is no party seeking a monetary award or marital property award in this case. Under the statute, the Family Law Article 8-202, it is provided that when the Court grants an annulment or a limited or absolute divorce, the Court may resolve any dispute between the parties with respect to the ownership of personal property. And that when determining the ownership of personal or real property, the Court may grant a decree that states what the ownership interest of each party is.

Relying on FL § 8-202, which governs the determination of property ownership, the court determined that the Property was titled in Dorothy's name and declared Dorothy the owner of the Property. The court declined to apply the factors set forth in FL § 8-205(b), presumably because neither party sought a monetary award as an adjustment of the equities and rights of the parties concerning marital property pursuant to FL § 8-205(a).³

Rollie requested in banc review by a three-judge panel of the circuit pursuant to Article IV, section 22 of the Maryland Constitution⁴ and Rule 2-551. In his in banc appeal,

³ The court also granted the parties an absolute divorce and granted Dorothy's request concerning restoration of her maiden name. Those issues have not been appealed.

⁴ Article IV, section 22, entitled “Reservation of points or questions for consideration by court in banc,” states:

Where any trial is conducted by less than three Circuit Judges, upon the decision or determination of any point, or question, by the Court, it shall be competent to the party, against whom the ruling or decision is made,

Rollie principally argued that the Property was “marital property” and, as such, the trial court was required to value the Property and apply the FL § 8-205(b) factors. Apparently ignoring Judge Serrette’s explicit finding that the Property was indeed marital property, Rollie asserted that Dorothy failed to prove that the Property was non-marital. He further asserted that, because the Property’s value exceeded seven million dollars, the trial court abused its discretion by awarding Dorothy “a bonanza of wealth or unconscionable marital award[.]” In his view, the trial court “should have exercised its discretion and correct the unfair and inequitable marital award.” Finally, Rollie contended that the quit claim deed did not satisfy the requirements of Md. Code (1974, 2015 Repl. Vol), § 4-101 of the Real Property Article.

upon motion, to have the point, or question reserved for the consideration of three Judges of the Circuit, who shall constitute a court in banc for such purpose, and the motion for such reservation shall be entered of record, during the sitting at which such decision may be made; and the procedure for appeals to the Circuit Court in banc shall be as provided in the Maryland Rules. The decision of the said Court in banc shall be the effective decision in the premises, and conclusive, as against the party at whose motions said points, or questions were reserved; but such decision in banc shall not preclude the right of Appeal by an adverse party who did not seek in banc review, in those cases, civil or criminal, in which appeal to the Court of Special Appeals may be allowed by Law. The right of having questions reserved shall not, however, apply to trials of Appeals from judgments of the District Court, nor to criminal cases below the grade of felony, except when the punishment is confinement in the Penitentiary; and this Section shall be subject to such provisions as may hereafter be made by Law.

The in banc panel issued a Memorandum Opinion and Order dated July 26, 2016. In resolving Rollie's in banc appeal, the following represents the in banc panel's legal analysis in its entirety:

The law is clear that when addressing marital property, the [FL § 8-205 (b)] factors must be considered by the court. A review of the record illustrates that the trial court did not address the factors as outlined in Maryland Family Law Code § 8-202 and § 8-205. As such, this Court sitting *in banc* remands this case for a full hearing only as to the issue of marital property.

After the in banc panel denied her motion to alter or amend its decision, Dorothy timely noted this appeal.

STANDARD OF REVIEW

In *Hartford Fire Ins. Co. v. Estate of Sanders*, 232 Md. App. 24, 38-40 (2017), Judge Deborah Eyler thoroughly explained this Court's standard of review of an in banc decision:

As an appellate tribunal, the in banc court "is subordinate to this Court just as we are subordinate to the Court of Appeals." *Azar*, 117 Md. App. at 433, 700 A.2d 821. *See also Langston v. Langston*, 136 Md. App. 203, 221, 764 A.2d 378 (2000) (stating "[i]f the in banc panel functions like an intermediate appellate court, then our role is akin to the Court of Appeals, in the sense that we provide an additional level of appellate review"), *aff'd on other grounds, Langston v. Langston*, 366 Md. 490, 784 A.2d 1086 (2001). Thus, it is helpful to examine the reviewing roles of this Court and the Court of Appeals in a case that comes before the former and then the latter on the same issue.

The "scope of review" for both Maryland appellate courts, set forth in Rule 8-131, is identical, with the exception of certain limitations the Court of Appeals imposes upon itself by virtue of the issues on which it grants certiorari. *See* Md. Rule 8-131(b). For an action tried without a jury, "the appellate court," that is, either the Court of Appeals or this Court, "will review the case on both the law and the evidence" and "will not set aside the

judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8–131(c). In other words, ordinarily, whether this Court is reviewing a ruling that comes before us on appeal from the trial court, or the Court of Appeals is reviewing the same ruling that comes to it on a grant of a petition for certiorari, after review by this Court, ultimately it is the judgment of the trial court that is under review.

Consistent with this concept, the same standards of review apply to appeals in both courts. When a pure question of law comes before either this Court or the Court of Appeals, the standard of review is *de novo*, that is, neither Court gives any deference to the trial court's interpretation of the law. *See Nesbit v. Gov't Emps. Ins. Co.*, 382 Md. 65, 72, 854 A.2d 879 (2004); *Walter v. Gunter*, 367 Md. 386, 392, 788 A.2d 609 (2002). This means, necessarily, that when the Court of Appeals grants certiorari to review a legal issue decided by the circuit court and addressed by this Court on appeal, it will not defer to this Court's decision. To be sure, the Court of Appeals may consider our reasoning and explain why it agrees or disagrees with it; and its mandate will affirm, reverse, or otherwise dispose of this Court's judgment. But ordinarily its decision will come down to whether the trial court's ruling was legally correct.

DISCUSSION

Whether Judge Serrette was legally required to consider the FL § 8-205(b) factors vis á vis the Property as held by the in banc court is a pure question of law which we review *de novo*. In our view, Judge Serrette was correct not only in relying exclusively on FL § 8-202, but also in concluding that an analysis of the factors set forth in FL § 8-205(b) was unnecessary because there was no request for a monetary award. We explain.

In *Falise v. Falise*, we described the unique nature of the concept of “marital property”:

Marital property is merely a term created by the legislature to describe the status of property acquired during the marriage, however titled (as defined in Md. Family Law Code Ann. § 8-201(e) (1984)), title to which may have given rise to a potential inequity, upon dissolution of the marriage. That

inequity, conceptually, may be corrected via a different legislative creature called the “monetary award.” *Thus, the only function of “marital property” is to form a base for a “monetary award.”* The legislature never intended that either spouse could have a legal *interest* in the “marital property” of the other since it merely intended to cure the title created inequity through the issuance of a “monetary award.”

63 Md. App. 574, 580 (1985) (first emphasis added). We concur with the *Falise* Court that “the only function of ‘marital property’ is to form a base for a ‘monetary award.’” *Id.* Where no monetary award is requested, as in this case, the legislative construct of “marital property” is completely irrelevant. Here, while Judge Serrette found that the Property was marital property, she correctly noted that “no party [is] seeking a monetary award or marital award in this case.” Judge Serrette therefore properly declined to consider the FL § 8-205(b) factors. Instead, she relied on FL § 8-202(a)(2), which provides:

When the court grants an annulment or an absolute divorce, the court may resolve any dispute between the parties with respect to the ownership of real property.

At trial, Dorothy asked the court to declare her the sole owner of the Property. Relying on the quit claim deed admitted into evidence, Judge Serrette found that the Property “is titled in [Dorothy’s] name and the [c]ourt will decree that she is the owner of said property.” That judicial declaration of ownership is expressly authorized by FL § 8-202(a)(2). *Cf. Hoffman v. Hoffman*, 93 Md. App. 704, 716-17 (1992). We perceive no error in that determination and, accordingly, reverse the decision of the in banc panel.⁵

⁵ In his brief, Rollie argued that, in light of his allegation that the Property’s value exceeded seven million dollars, the circuit court abused its discretion by failing to “adjust the inequalities” resulting from the declaration that Dorothy is the sole owner of the

JUDGMENT OF THE IN BANC PANEL IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED WITH INSTRUCTIONS TO AFFIRM THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY. COSTS IN THIS COURT AND IN THE IN BANC PROCEEDING TO BE PAID BY APPELLEE.

Property. He further noted a deficiency in the quit claim deed. Because Rollie sought and obtained in banc review, he has no further right of appeal, and we cannot address these issues. *See* Maryland Rule 2-551(h); *Langston v. Langston*, 136 Md. App. 203, 219 (2000).