Circuit Court for Baltimore County
Case No. C-03-FM-22-003065

UNREPORTED *

IN THE APPELLATE COURT

OF MARYLAND

No. 2277

September Term, 2022

FREDERICK WILLIAM BESCHE

v.

DEBORAH BESCHE

Leahy,
Reed,
Sharer, Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: February 23, 2024

This case comes to us as a *pro se* appeal from a judgment for absolute divorce following upon a greater-than-one-year separation. In his informal brief, Frederick William Besche ("Husband") asks us to "reverse the judgement [sic]" of divorce of the Circuit Court for Baltimore County. He contends that "the trial court improperly awarded a judgement [sic] of absolute divorce" to Deborah Besche ("Wife"), "despite the fact that [he has] been 100% loyal to, and supportive of [his] wife in every way imaginable during the thirty-plus years of [their] marriage." Husband alleges, some ten years after his separation from his wife, that Wife's pursuit of a no-fault divorce was motivated by a desire to deprive him of her estate under the terms of their antenuptial agreement, and he characterizes her action as a "fraud."

Husband does not dispute the facts asserted by Wife that provide the legal grounds for the judgment of absolute divorce. Neither does he challenge the enforceability of the antenuptial agreement, which disposed of all questions of spousal support or monetary award as an adjustment of the equities. We conclude, therefore, that the issues Husband raises on appeal may be summed up as one: Whether the trial court erred as a matter of law when it granted the judgment of absolute divorce?

We discern no error and affirm the judgment of the circuit court.

BACKGROUND

Husband and Wife were married on May 18, 1991, after entering into an Antenuptial Agreement (the "Agreement") on May 11. The Agreement purported to "finally determine . . . all rights and claims between them which may arise by reason of [the parties'] absolute

divorce or the death of either." The Agreement provides, in relevant parts, that the parties renounce all rights to each other's present or future property; that in the event of divorce the parties waive all claims to spousal support or monetary award as an adjustment of the equities; that there shall be deemed no marital property; and that neither party would have any claim whatsoever to the other's estate unless they were married at the time of death.[1]

The parties lived together as husband and wife until Wife moved out of the marital home in January of 2013, and they continued to associate in the years that followed. During the ten years that followed their separation, Husband "would frequently stay over [at Wife's house] on Christmas Eve and New Year's Eve." The parties last resided overnight

[1] The Agreement provides, in relevant parts:

5. Except as otherwise provided in this Agreement each party renounces any interest by way of curtesy, dower, homestead or similar rights in and to any property of the other now owned or hereafter acquired by either party[.] . . .

* * *

10. . . . [T]he parties mutually release, waive and surrender any and all rights and claims to alimony and support[.] . . .

11. Each party waives and releases his or her right to claim a monetary award as an adjustment of the equities and rights of the parties concerning marital property . . . in the event the proposed marriage is terminated by an absolute divorce. Each party agrees that for the purposes of this Agreement, this Marriage and any absolute divorce there shall be deemed to be no marital property[.] . . .

* * *

15. Except as otherwise expressly provided in this Agreement, each party waives and releases all rights and claims that he or she may have to share or participate in any capacity whatsoever in the estate of the other party upon such other party's death[.] . . . Notwithstanding the foregoing, the parties expressly agree that in the event of the death of the other while still married to the other, the surviving party shall be entitled to family allowance as provided by Maryland Code, Estates and Trusts, Section 3-201.

in the same household on December 31, 2020. There are no children of the marriage.

Complaint for Divorce and Retention of Counsel

On June 6, 2022, Wife filed a Complaint for Absolute Divorce on the grounds of a one-year separation. She asked the court to affirm the validity of the Agreement and to uphold the division of property defined therein. Counsel for Husband, A. David Zerivitz, Esq., filed an answer consenting to the divorce on June 9, and an uncontested divorce hearing was set for September 15.

On September 8, 2022, however, Husband filed a motion to postpone the hearing because he had rejected the settlement agreement. On September 9, he wrote to the court to withdraw his consent to the divorce, asserting that he had given it under duress from his attorney. In this letter, Husband alleged that Wife was "fraudulently pursuing a no-fault divorce," "solely for the purpose of depriving him of a valuable possession," which he describes as "her multi-million-dollar estate" that he would inherit if she predeceased him during their marriage.

On September 14, Husband submitted a memorandum to the court, stating that he had fired Mr. Zerivitz that same day and requesting the immediate removal of his appearance from the proceedings. In this memorandum, Husband expressed his opposition to the divorce, but suggested that if it were granted, he should be awarded $200,000.00.[2]

[2] In his letters to the circuit court and his briefs to this Court, Husband asserts a number of claims that are not cognizable in the present action, and from which he derives his demand for a monetary award. *See, e.g.*, Husband's allegation that Wife:

(Continued)

Mr. Zerivitz filed a motion to withdraw his appearance the following day, September 15, which the court did not grant until October 5. Also on September 15, 2022, Magistrate McBee convened the scheduled uncontested hearing and acknowledged Husband's withdrawal of consent. The court scheduled a contested hearing for absolute divorce for January 30, 2023, and Jennifer Anderson, Esq., entered her appearance for Husband.

On January 9, 2023, Husband filed a motion to postpone the contested hearing on the grounds that he "had to discharge [his] current lawyer," which the court denied the following day. Husband signed an affidavit on January 12, acknowledging his "knowing and voluntary request" for Ms. Anderson to withdraw from the case and "be stricken effective immediately," and expressing his belief that it would "not unfairly prejudice either party." Ms. Anderson attached Husband's signed consent to her motion to withdraw her appearance.

On January 26, Husband submitted a second motion[3] to postpone the divorce hearing on the grounds that the court had failed "to make reasonable and acceptable

> replace[d] at least seventeen (17+) original, historic, circa 1920, wooden-framed windows (containing irreplaceable period glass) with CHEAP VINYL WINDOWS that do not come remotely close to conforming to the architectural historic standard for windows as described within the Guilford covenant. So [he] will never be able to sell this house until all of those 17 windows are replaced with extremely expensive Covenant-compliant windows that have been preapproved by the Guilford Association, well before their installation by a preapproved vendor.

(Emphasis removed).

[3] Husband also emailed the judge to explain the motion and to tell the judge that she, the judge, "may have engaged in a conspiracy with the plaintiff's attorney."

accommodations for victims of narcolepsy," with attachments detailing his multiple ailments. The court denied the motion on January 30, stating that it was "unclear why a postponement is a reasonable accommodation."

Contested Hearing for Divorce

The Honorable Ruth Ann Jakubowski duly held the divorce hearing on January 30, 2023, at which Wife was represented by counsel and Husband appeared *pro se.* Husband's recently-terminated counsel, Ms. Anderson, attended to "confirm with [Husband]," before the court, "that [Husband] still want[ed] to terminate [her], [did] not want [her] to represent him, and that he [was] going to go forward pro se." Husband affirmed that Ms. Anderson's withdrawal was, "what I want" and responded "Yeah, yeah" when the judge asked if he was prepared to represent himself. The judge emphasized that *she* could not represent Husband or give him legal advice, and he replied, "Okay[,]" declining the judge's suggestion that he "rehire [Ms. Anderson] for today's proceeding." The judge explained to Husband:

> The only thing that's in front of me today is [Wife]'s pleading for divorce, that's it. If she can prove grounds for divorce, which is a one year separation, I will grant her a divorce. **You have not filed anything to counter that** other than withdrawing your consent, so you will be allowed to question [Wife] on the grounds for the separation. Understood? That's it. Because this I can advise you of. Under Maryland law, if you have been separated for one year or more, regardless of what the other person says, if they want to stay married, don't want the divorce, it doesn't matter. I can grant a divorce under Maryland law if they have been in fact separated for one year, whether or not you want the divorce.

(Emphasis added.) As Husband hesitated, the judge emphasized: "That's the law." Husband replied, "I know."

Wife testified that the couple had separated in January of 2013, when she "left the home" "because [she] was told to." She stated that "during [the subsequent] 10 years [Husband] would frequently stay over on Christmas Eve and New Year's Eve[,]" but they had not stayed under the same roof overnight since December 31, 2020. Wife averred that there was no hope of reconciliation. She entered into evidence the Agreement, the contemporaneous "assets and liability summaries, and the tax returns and documents" that are referenced and incorporated in the Agreement. She explained that pursuant to the Agreement, both parties waived all rights to alimony or monetary award. Wife further testified that she and Husband did not hold "any jointly titled assets at all whatsoever that were acquired during the marriage[.]"

Husband conceded that he "didn't sleep over during the period that we're talking about," attributing it Wife's " refus[al] to allow [him]" to do so. He attempted to cross-examine Wife to elicit her reasons "for not allowing [him] to stay in [her] home[.]" However, the judge sustained Wife's objection, deeming the question irrelevant to her testimony concerning their separation since December 31, 2020. The court limited Husband's own testimony to matters already testified to by Wife, including the duration of the marriage, their separation, and the prenuptial agreement. As the court stated:

> [the] things that [Wife] testified to as it relates to the duration of the marriage, she testified as to when you were married, where you were married, and how long you lived together and when you were separated. . . . And you've heard her testify that you were separated continuously since December 31st, 2020. . . . And she also testified about the pre-nup agreement, which was admitted into evidence along . . . with the documents that went with it, which I have also admitted into evidence. That's the only thing you can talk about in terms of anything you want to tell me as to why you don't think she's entitled to a

divorce on the grounds of two years separation.

In his case-in-chief, Husband disputed Wife's claim of continuous separation, insisting that he and Wife, "*have* lived together under the same roof continuously during that period of time[,]" except for the fact that "if [he] tried to stay overnight she could call the police or something." Emphasis added. Likewise, he claimed that he and Wife "function 100 percent as husband and wife in every way, except I wasn't allowed to stay overnight." Husband testified that during the period in question, he visited Wife "every Saturday, every Sunday. [He] played with the dogs, [they] went to restaurants together, [they] had dinners with friends." Husband asserted that "[i]f she ever had a problem, [he] would go up there, [he]'d bring [his] tools, and help her saw a door in half or whatever, whatever she needed[,]" and "when she had an emergency, [he came] barreling to her side." Husband described himself as "a superb husband" and "always 100 percent loyal."

Judgment of Absolute Divorce

That same day, January 30, 2023, the judge rendered the following ruling:

> The Court has considered the papers that were filed in this case, I've considered the testimony of [Wife], as well as the testimony of [Husband]. And based on the circumstances, I do find sufficient grounds to grant a divorce. I do find based on the fact that the parties have been separated for one year, that there are sufficient grounds, more than one year. There are sufficient grounds to grant a divorce and I will grant a divorce.

The judge signed the Judgment of Absolute Divorce from the bench, based upon "testimony having been taken" and "evidence having been considered[,]" and found that the Agreement "resolve[d] all issues pertaining to property and support[.]" The Order incorporated the terms of the Agreement, denied spousal support and monetary award to

both parties per the parties' "express waivers[,]"and ordered each party to pay their own attorneys' fees and costs. Husband noted this timely appeal.

DISCUSSION

A. Parties' Contentions

Husband contends that "the trial court improperly awarded a judgement [sic] of absolute divorce to [his] wife, despite the fact that [he] ha[d] been 100% loyal to, and supportive of [his] wife in every way imaginable during the thirty-plus years of [their] marriage." Husband and Wife do not contest the dispositive facts of the case; Husband does not challenge the existence or validity of the parties' antenuptial agreement, the fact that Wife moved out of the marital home in 2013, the fact that Husband and Wife last slept under the same roof on December 31, 2020, nor the fact that they have not had sexual relations in the intervening time.

Husband explains that "[b]eginning around 2010, the bloom had gone off the rose" and he "suggested [to Wife] that maybe, to promote marital tranquility, and to make our marriage more bullet-proof, she could use a small fragment of her financial reserves to buy a nice house in the suburbs, with much more outdoor room for the dogs to enjoy."[4] He elaborates:

> So around 2012, my wife found a nice house in a quiet neighborhood in Cockeysville, and moved into it. We never separated in any way shape or form, and distance did make the heart grow fonder. The facts are that I drove up to her house in Cockeysville virtually every single Saturday and Sunday

[4] In quoting Husband's appellant's brief, throughout, we amend capitalization to reflect the conventions of formal writing and promote readability.

> during those ten years between 2012 and 2022 to have lunch together, to walk the dogs together, to go to the Towson Mall together, to enjoy watching TV series together, and so forth, as one would expect in a normal marriage.

Husband acknowledges that "one of the deciding factors for the granting of a divorce has to do with whether one of the spouses has not stayed overnight for at least a year." However, he claims that because he and Wife "have not had sex for at least 20 years and maybe 30 years," it is entirely irrelevant whether or not he had stayed overnight with Wife. Finally, Husband accuses Wife of "manufacturing whatever story that she feels she has to, in order to be granted an absolute divorce, for no other reason than to defeat the terms of [their] antenuptial agreement" and "doing everything possible to make sure that her blood relatives get all of her financial assets after her demise[.]" Notably, Husband does not contest the validity of the Agreement, describing it as "still-valid, signed and sealed[.]"

Wife asserts that she "testified to all facts required for the court to grant an absolute divorce on the grounds of a one-year separation[,]" and her "testimony was unrefuted." She states that "pursuant to Md. Code Family Law §7-103(a)(4), the court may decree an absolute divorce on the grounds of a 12-month separation when parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application for divorce[,]" and the circuit court was "correct in awarding the divorce to [her] on this ground as a matter of law."

Wife also contends that the hearing was procedurally fair, as "[Husband] stated he wanted to represent himself and confirmed he understood that the judge could not represent

him or give him legal advice" at the January 30, 2023 contested divorce hearing, where he also requested his attorney's appearance be stricken.

Addressing Husband's "numerous" allegations articulated in his briefs, Wife emphasizes that he did not raise them before the circuit court and that they are not pertinent to the legal analysis of divorce. She observes that some of the events he cites occurred more than twenty years ago and contends that Husband neglected to raise these objections "in a timely manner and in the appropriate forum." Wife argues, that fundamentally, "[Husband] takes issue with [Wife] having a right to be granted a divorce over his objection, even if the facts satisfy the elements set forth in the relevant statute."

B. Standard of Review and Legal Framework

Where an action has been tried without a jury, this Court "review[s] the case on both the law and the evidence," and we will "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). We "review[] *de novo* a lower court's interpretation of a contract, as well as its interpretation and application of Maryland statutory and case law." *Lloyd v. Niceta*, 485 Md. 422, 440 (2023) (citations omitted).

At the time of the parties' divorce hearing and judgment on January 30, 2023[5],

[5] In October 2023, during the pendency of this appeal, a revision to the statute governing the grounds for absolute divorce took effect. FL § 7-103. Under the revised provisions:

(a) The court may decree an absolute divorce on the following grounds:

(Continued)

Maryland Code (1984, 2019 Repl. Vol.) Family Law Article ("FL") § 7-103 recognized grounds for absolute divorce in a "12–month separation, when parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application for divorce[.]" FL § 7-103(a)(4) (effective October 1, 2018 to September 30, 2023). The statute departs from the previous requirement that the separation supporting a no-fault divorce be "voluntary," as stipulated in FL § 7-103 up until September 30, 2011.[6] Further, under FL § 7-104:

> (a) In and of itself neither of the following is a defense to or a bar to a divorce:
>
> (1) an unaccepted offer of reconciliation by a spouse; or
> (2) a rejected attempt at reconciliation by a spouse.

FL § 7-104(a). Therefore, it is clear that one party can effect the separation that leads to a no-fault divorce under FL § 7-103(a) unilaterally.

The nature of the separation required under FL § 7-103(a)(4) at the time that this

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> (1) 6-month separation, if the parties have lived separate and apart for 6 months without interruption before the filing of the application for divorce[.]

FL § 7-103(a)(1). Further:

> (b) Parties who have pursued separate lives shall be deemed to have lived separate and apart for purposes of subsection (a)(1) of this section even if:
> (1) the parties reside under the same roof; or
> (2) the separation is in accordance with a court order.

FL § 7-103(b).

[6] *See Aronson v. Aronson*, 115 Md. App. 78, 95–96 (1997) (In 1997, interpreting the concept of voluntariness pursuant to Family Law § 7-103(a), a court could grant an absolute divorce on the grounds of voluntary separation. This could occur "if the parties voluntarily have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application for divorce; and there is no reasonable expectation of reconciliation.").

case was decided is explained in our 2014 opinion in *Bergeris v. Bergeris*, in which we addressed the term "separate and apart without cohabitation[.]" *Bergeris v. Bergeris*, 217 Md. App. 71, 76 (2014). We held that the clause "'[s]eparate and apart' means that the parties cannot live under the same roof during the required statutory period. This is a requirement even if the parties have discontinued having sexual relations." *Id.* (citing Callahan & Ries, Fader's Maryland Family Law at § 4–4[9][5] (5th ed. 2011).

We next explained that the clause "'[w]ithout cohabitation' means that there must be no sexual relations between the husband and wife living separate and apart with the intention and for the purpose of establishing this particular ground for divorce." *Id.* Therefore, under the statute in effect when the court decided this action, "[t]he separation contemplated by the statute does not occur until the parties *both* cease living in the same house *and* cease having sexual relations." *Id.*

However, we have also described "'cohabitation' as a term that embraces more than a sexual relationship alone" and "connotes the mutual assumption of the duties and obligations associated with marriage." *Bergeris*, 217 Md. App. at 77-78 (quoting *Ricketts v. Ricketts,* 393 Md. 479, 484 n.1 (2006)). In *Gordon v. Gordon*, the Supreme Court of Maryland formulated a non-exhaustive "list of factors to consider in determining whether a relationship constitutes cohabitation" to guide the interpretation of separation agreements that restrict the parties' conduct with new partners. *Gordon v. Gordon*, 342 Md. 294, 308 (1996). Emphasizing that "no one factor serves as an absolute prerequisite for cohabitation[,]" the Court directed courts to consider the indicia:

1. establishment of a common residence;
2. long-term intimate or romantic involvement;
3. shared assets or common bank accounts;
4. joint contribution to household expenses; and
5. recognition of the relationship by the community.

Id. at 308-09. Additionally, the Court clarified that a "common residence is not established merely by time spent together, but rather, requires that both parties treat the residence as their home." *Gordon*, 342 Md. at n.10.

C. Analysis

As we explain above, the controlling statute at the time of the judgment from which Husband appeals was satisfied so long as Husband and Wife lived "separate and apart without cohabitation" for at least twelve months. FL § 7-103(a)(4). The terms "separate and apart" denotes, that "the parties cannot live under the same roof during the required statutory period." *Bergeris*, 217 Md. App. at 76 (citing Callahan and Ries, at § 4–4[9][5]). Husband concedes that he and Wife have not spent the night under the same roof since January 1, 2021, more than two years before the circuit court granted their divorce.

The statute also requires that the divorcing parties eschew cohabitation. FL § 7-103(a)(4). Generously construed, Husband makes a legal argument that he endeavored to continue a cohabitation arrangement, but Wife refused him. He asserts that he would have continued to spend nights at Wife's house at least once a year, "except I was not allowed -- you know, if I tried to stay overnight she could call the police or something." However, Maryland divorce law ceased to include a "voluntariness" requirement for separation under FL § 7-103 as of September 30, 2011. Neither is "an unaccepted offer of reconciliation" a

defense to a divorce. FL § 7-104(a)(1). Therefore, the bare fact that Wife and Husband shared no overnight visits for over two years is sufficient to establish the requirement that the parties live 'separate and apart' for the statutory period.

Moreover, interactions between the parties in the two years preceding the circuit court's judgment fail to demonstrate a single one of the *Gordon* factors considered by Maryland courts to be indicia of cohabitation. *Gordon*, 342 Md. at 308-09. Husband and Wife abandoned a shared residence some ten years prior. Husband declares that "[the parties] have not had sex for at least 20 years[.]" Neither party asserts that they have common bank accounts, and Husband indicates that Wife used "her financial reserves" to buy her house. Finally, although Husband claimed that during his weekly visits to Wife's home, "[they] went to restaurants together, [they] had dinners with friends[,]" he does not assert that the community recognized them as cohabitants.

Here, the circuit court granted the January 2023 judgment of divorce on the then-controlling statutory requirement of a "12–month separation, when parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application for divorce[.]" FL § 7-103(a)(4). The undisputed facts show that Husband and Wife did indeed live separately and apart, and without cohabitation, for over a year prior to the judgment. Therefore, we find no error in the court's finding of "sufficient grounds to grant a divorce[,]" and we affirm its judgment.

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