Circuit Court for Montgomery County
Case No.: 153879FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2592

September Term, 2019

GAMAL HELAL

v.

HEBA HELAL

Berger,
Friedman,
Gould,

JJ.

Opinion by Gould, J.

Filed: May 19, 2021

*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.

This comes to us from two interlocutory orders in an ongoing divorce case. In one of the orders, the court invalidated the prenuptial agreement between the parties at the request of the wife. In the other order, the court awarded the wife attorneys' fees pendente lite. For the reasons we explain below, we affirm the order awarding fees to the wife, and we dismiss the appeal as to the order invalidating the prenuptial agreement.

BACKGROUND

Appellant Gamal Helal ("Husband") and appellee Heba Helal ("Wife") have been married since June 29, 2011. This is Wife's second marriage and Husband's third. Both have children from their previous marriages. Husband is originally from Egypt but has lived in the United States since 1977. At the time of their marriage, he was a wealthy and successful Arabic interpreter.

Wife is an Egyptian journalist who met Husband in 2009 while in the United States for a scholarship with the Woodrow Wilson Institute. She and her two daughters permanently relocated to the United States and moved into Husband's home shortly after she and Husband became engaged in late 2009.

Six days prior to their wedding, the parties entered into a prenuptial agreement (the "Agreement"). Wife testified that Husband did not mention the Agreement until approximately a week before the wedding. The Agreement was written in English by Husband's counsel. Wife was provided with an attorney suggested by Husband's counsel. Wife alleged that her attorney did not adequately explain the terms of the Agreement and

that she was not provided with a translator.[1] As a result, she claimed that she signed the Agreement without fully understanding it. Wife also discovered later that the financial disclosure in the Agreement contained several errors and omissions for both parties.[2]

THE PRENUP ORDER

Wife filed a complaint for absolute divorce in the Circuit Court for Montgomery County in June 2018. Husband responded with a "Motion to Dismiss and for Order Incorporating Prenuptial Agreement," which Wife opposed. The court held a four-day evidentiary hearing on the validity of the Agreement and heard testimony from Husband, Wife, and several other witnesses.

The court invalidated the Agreement (the "Prenup Order"). In coming to its decision, the court credited Wife's version of events surrounding the Agreement's execution, finding:

> the process by which the prenup was procured, including its drafting by husband's counsel, and review[ing] by a lawyer selected by husband's counsel, the missing assets in the disclosure, the total lack of any discussion about [its] terms, the insisting that it be read and signed before the scheduled dress fitting, and the overall picture of husband's control of the family lead to the conclusion that the prenup is invalid.

A full merits trial on the divorce was scheduled for April 2020.

[1] Wife's proficiency in English at the time she signed the Agreement is contested by the parties.

[2] The court found that the Agreement omitted approximately $332,000 worth of Husband's assets and overstated the value of Wife's assets.

THE *PENDENTE LITE* ORDER

After the court invalidated the prenuptial agreement, Wife filed a request for *pendente lite* alimony and attorneys' fees, and a hearing on that request was held before a magistrate in October 2019. Following the hearing, the magistrate recommended that Husband be required to pay $80,000 for the attorneys' fees that Wife had incurred through the hearing date.[3]

Husband filed "Exceptions to the Magistrate's Findings and Recommendations and Request for a Hearing or in the Alternative Request for Reconsideration" (the "Exceptions Motion"). He argued, among other things, that approximately $13,000 of the attorneys' fees awarded were incurred in a separate civil matter between the parties and were therefore not recoverable in the divorce case. Husband also asked the court to reconsider the Prenup Order, asserting that certain "newly discovered evidence" impacted the credibility assessment the circuit court gave to Wife and one of the witnesses who testified on her behalf at the hearing.[4]

[3] The magistrate deferred Wife's request for *pendente lite* alimony to the merits trial, finding that the parties failed to provide sufficient evidence of income and expenses at the hearing. The magistrate also deferred the issue of future attorneys' fees for consideration at trial.

[4] This new evidence was approximately 80 YouTube videos depicting a romantic relationship between Husband and his former assistant. Husband alleged that Wife conspired to publish the videos online with an individual who testified as a witness on her behalf at the hearing.

THE EXCEPTIONS ORDER

In February 2020, the circuit court held a hearing on the Exceptions Motion. The court stated that it would consider only Husband's exceptions to the magistrate's attorneys' fees award. It repeatedly declined Husband's request to revisit the Prenup Order, and instead deferred Husband's motion to reconsider to the merits trial. Following the hearing, the court issued an order (the "Exceptions Order") stating the following:

> By way of background, the parties appeared before Magistrate Segal for a *Pendente Lite* hearing on December 12, 2019. At that hearing, Magistrate Segal awarded [Wife] $80,000 in attorney's fees, incurred through October 30, 2019. The Magistrate analyzed the parties' assets and liabilities, including [Husband's] substantial assets and low monthly expenses.
>
> During the Exceptions Hearing on February 12th, [Husband] raised an issue regarding the legal fees awarded to [Wife]. [Husband] claimed that, of the $80,000 awarded to [Wife], $13,000 were related to [Husband's] District Court replevin action. Initially, the Court Ordered that $67,000 be paid to [Wife's] counsel. Upon further consideration, the Court has determined that the entire $80,000 in fees shall be awarded to [Wife], $13,000 of which will be held in [Wife's] counsel's escrow account, pending further proceedings.
>
> [Husband] also requested that he be permitted to reopen and introduce evidence related to the validity of the parties' prenuptial agreement. The Court denied that request.
>
> For the reasons stated herein, and on the record, **it is this 13th day of February, 2020,** by the Circuit Court for Montgomery County hereby
>
> **ORDERED**, that [Husband's] Exceptions . . . be, and are hereby, **DENIED** in part and **DEFERRED** in part; and it is further
>
> **ORDERED**, that the Eighty Thousand Dollars ($80,000) in attorney's fees shall be allocated as follows:
>
> - Attorney's fees in the amount of Sixty-Seven Thousand Dollars ($67,000) shall be reduced to judgment in favor of [Wife] and against [Husband], to be paid not later than February 22, 2020; and

- Fees in dispute in the amount of Thirteen Thousand Dollars ($13,000) shall be held in in [Wife]'s Counsel's escrow account, pending further Order of Court; and it is further

ORDERED, that [Husband's] Request for Reconsideration . . . be, and is hereby, **DEFERRED** to the Merits Trial on April 13, 2020.

The merits trial has since been continued and is currently set for October 2021.

Husband then filed an interlocutory appeal to this Court and moved to stay enforcement of the Exceptions Order pending the outcome of his appeal, which the circuit court granted.

Husband now presents us with three questions, which we have reordered to correspond to the structure of this opinion:

1. Did the trial court abuse its discretion by refusing to reconsider the validity of the prenuptial agreement prior to awarding attorneys['] fees to [Wife]?

2. Did the trial court err by awarding amounts for which there is no statutory basis?

3. Did the trial court err in ruling the parties' prenuptial agreement was invalid?

DISCUSSION

I.

THE EXCEPTIONS ORDER

Husband's first and second questions, as re-ordered above, claim error in two aspects of the Exceptions Order: (1) the court's refusal to hear the motion for reconsideration before ruling on the exceptions; and (2) the award of attorneys' fees.

Because the Exceptions Order is interlocutory, we must first decide whether and to what extent the Exceptions Order is appealable.

A.

JURISDICTION

In Maryland, "appellate jurisdiction, except as constitutionally authorized, is determined entirely by statute[.]" *Gisriel v. Ocean City Bd. of Sup'rs of Elections*, 345 Md. 477, 485 (1997). Generally, pursuant to Section 12-301 of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Annotated Code (1974, 2020 Repl. Vol.), a litigant may only appeal from a "final judgment." *URS Corp. v. Fort Myer Constr. Corp.*, 452 Md. 48, 65 (2017). To be considered final, a judgment:

> (1) . . . 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.

Rohrbeck v. Rohrbeck, 318 Md. 28, 41 (1989).

There are three exceptions to this general rule that allow immediate appeals from interlocutory orders. Specifically, an interlocutory appeal may be taken if it is permitted: (1) by statute, (2) under Maryland Rule 2-602(b), or (3) under the common law collateral order doctrine. *Shoemaker v. Smith*, 353 Md. 143, 165 (1999). Unless an appeal is from a final judgment or qualifies for one of these exceptions, an appellate court lacks jurisdiction to hear the appeal. *See Gruber v. Gruber*, 369 Md. 540, 546 (2002).

CJP § 12-303(3)(v) allows for an appeal of an interlocutory order in a civil case, "[f]or the sale, conveyance, or delivery of real or personal property or the *payment of*

money, or the refusal to rescind or discharge such an order, unless the delivery or payment is directed to be made to a receiver appointed by the court[.]" (Emphasis added). Maryland courts have found that *pendente lite* awards for attorneys' fees in divorce cases qualify as orders "for the payment of money" under CJP § 12-303(3)(v) and are thereby generally appealable. *See Simmons v. Perkins,* 302 Md. 232, 235 (1985) ("The types of orders previously held by this Court to be orders for the 'payment of money' [under CJP § 12-303(3)(v)] are orders for alimony, child support, and *related counsel fees*.") (emphasis added); *see also Pappas v. Pappas*, 287 Md. 455, 462 (1980); *Lieberman v. Lieberman*, 81 Md. App. 575, 582 (1990); *Knott v. Knott*, 146 Md. App. 232, 245-46 (2002).

The Exceptions Order made two separate rulings on the *pendente lite* attorneys' fees award: one regarding $67,000 of the award and another pertaining to $13,000 of the award. Both rulings require the "payment of money" under CJP § 12-303(3)(v) and thus, as to these rulings, the Exceptions Order is an appealable interlocutory order.[5]

[5] Wife argues that neither of the awards in the Exceptions Order are appealable. She reasons that the awards do not fall under CJP § 12-303(3)(v) because they are not "equitable in nature," as they did not make Husband directly answerable to the court for noncompliance and imprisonment for contempt is not a possible remedy for violation of the order. It's a close call, but we disagree. *See Anthony Plumbing of Maryland, Inc. v. Att'y Gen. of Maryland*, 298 Md. 11, 20 (1983) (holding that alimony, child support, and related counsel fees are orders for the "payment of money" under § 12-303(3)(v)); *Yamaner v. Orkin*, 310 Md. 321, 325 (1987) (stating that orders for the payment of money under CJP § 12-303(3)(v) are "equitable in nature[,]" "proceed directly to the person so as to make one against whom it operates directly and personally answerable to the court for noncompliance," and include "imprisonment for contempt" as a sanction for their violation); *Rubin v. Rubin*, 233 Md. 118, 125 (1963) ("[T]he nature of the wife's allowance for the expenses of a divorce suit is 'in fact a sort of alimony[.]'"); *Oles Envelope Corp. v. Oles,* 193 Md. 79, 92 (1949) (holding that the obligation to pay alimony "may be enforced by attachment of the person for contempt, and the defendant may be imprisoned").

B.

ANALYSIS

1.

THE MOTION FOR RECONSIDERATION

At the outset, we note that the argument section in Husband's brief regarding the motion for reconsideration does not address the substance of the corresponding question presented. In his question presented, Husband asks if circuit court erred by "refusing to reconsider the validity of the prenuptial agreement prior to awarding attorneys['] fees to [Wife]." The unstated but inferable premise behind this question is that there was something special or unique about the attorneys' fee award that should have compelled the court to resolve his motion for reconsideration first. The issue, as framed in the question presented, implicates the rules applicable to motions for reconsideration and exceptions to magistrate's reports and the underlying policies and concerns with respect to both types of filings. But that's not how Husband argued the issue later in his brief.

In the argument portion of his brief, Husband doesn't argue that the motion for reconsideration should have been heard before the exceptions on the attorneys' fees; he argues instead that the motion should have been heard before the trial, contending that a:

> hearing prior to the trial date was appropriate in order to conserve judicial resources and the resource[s] of the parties. Much attorney time and much money would be spent arguing trial-related motions regarding discovery, lay and expert witnesses and the admissibility of certain exhibits, and preparing for a trial that would not be necessary if Appellant prevailed on his motion to reconsider.

Thus, as argued, it wouldn't have mattered to Husband if the motion for reconsideration was heard after the exceptions, so long as it was heard before trial. We generally don't address an issue raised in an appeal unless it is adequately briefed. *See DiPino v. Davis*, 354 Md. 18, 56 (1999). Accordingly, we will only address the issue as articulated in the argument section of Husband's brief—which we view as a general objection to the court's discretionary decision to defer the motion for reconsideration to the merits trial.

Turning to the merits of Husband's argument, we note that any litigant who takes issue with how a trial court manages its docket has a steep hill to climb. "The inherent authority of a court to control its docket is widely recognized." *Heit v. Stansbury*, 215 Md. App. 550, 568 (2013) (quotation omitted). The circuit courts, with their crowded dockets, must have flexibility to determine the most efficient and effective allocation of their resources. *See Volkman v. Hanover Invs., Inc.*, 225 Md. App. 602, 626 (2015), *aff'd*, 455 Md. 1 (2017); *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 716-17 (2000). Thus, courts have broad discretion to manage their resources, and we will not second guess such decisions "unless it clearly appear[s] that prejudice has resulted from the denial of a legal right." *Eagle-Picher Indus., Inc. v. Balbos*, 84 Md. App. 10, 27 (1990), *aff'd in part, rev'd in part on separate grounds*, 326 Md. 179 (1992).

Here, the court devoted four days to an evidentiary hearing on the validity of the Agreement and set aside another four days to hold a merits trial. Important though this case is, so too are the thousands of other cases pending in the circuit court. Thus, Husband was not entitled to yet a third evidentiary hearing, particularly on an issue that can be heard

at the merits trial without causing any prejudice to Husband. We perceive no abuse of discretion in the court's deferral of Husband's motion for reconsideration to the merits trial.

2.

STATUTORY BASIS FOR THE ATTORNEYS' FEES AWARD

Husband argues that in the Exceptions Order, the court abused its discretion by awarding attorneys' fees without an appropriate statutory basis. "Maryland law clearly establishes that attorney's fees may not be recovered absent an express contractual provision, statutory authority, or the application of Md. Rule 1–341." *Smith v. Luber*, 165 Md. App. 458, 471 (2005). Relevant provisions of the Family Law Article provide express statutory authority that "[a]t any point in a proceeding under this title, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding." Md. Code Ann., Fam. Law ("FL") § 7-107(b) (1984, 2019 Repl. Vol.) (permitting attorneys' fee awards in proceedings under the Divorce title); *see also* FL § 8-214(b) (permitting attorneys' fees awards for proceedings related to the division of marital property); FL § 11-110(b) (permitting attorneys' fees awards in proceedings under the Alimony title).[6]

Husband argues in his brief that there was no statutory basis for either the $67,000 or the $13,000 awards. In the Exception Motion, however, Husband limited his objections to the $13,000 award, which he alleged was incurred in a separate district court case.

[6] The relevant portions FL §§ 7-107, 8-214, and 11-110 contain identical language and have been construed together as "one family law scheme" governing fee shifting in domestic cases. *Henriquez v. Henriquez*, 413 Md. 287, 305 (2010).

Accordingly, he failed to preserve his challenge to the $67,000 award in the Exceptions Order. *See* Md. Rule 8-131 (a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

As for the $13,000 award, we fail to see the basis for a claim of error. The circuit court has not yet determined whether Wife will be entitled to receive those funds, as the funds will be held in Wife's counsel's escrow account "pending further proceedings." To the extent Husband claims error in the circuit court's decision to preserve the funds in the meantime, this strikes us as a discretionary decision with which we perceive no abuse.

II.

THE PRENUP ORDER

We now turn to Husband's argument that the circuit court erred in invalidating the Agreement. Again, the threshold issue is whether we have jurisdiction to hear an appeal from this order. *See Gruber*, 369 Md. at 546. Husband argues that because CJP § 12-303(3)(v) permits an appeal from the *pendente lite* attorneys' fees awards, it permits by extension an interlocutory appeal of the Prenup Order. For support, he cites to *Frey v. Frey*, 298 Md. 552 (1984), and *Cannon v. Cannon*, 384 Md. 537 (2005), arguing that in both cases, the court allowed interlocutory appeals from orders invalidating prenuptial agreements because they were inextricably linked to appealable *pendente lite* monetary awards.

This case is distinguishable from both *Frey* and *Cannon.* In *Frey*, because the order for the payment of money was predicated on the trial court's invalidation of the prenuptial

order, the Court of Appeals could not review the former unless it reviewed the latter. 298 Md. at 556-557. Similarly, in *Cannon*, the Court found that it had appellate jurisdiction to review an interlocutory order invalidating a prenuptial agreement only because *pendente lite* alimony was awarded "as a consequence of the invalidation of the agreement." 384 Md. at 567 n.1.

In contrast, here, our resolution of the appeal from the Exceptions Order did not require us to determine whether the court erred by invalidating the Agreement. Thus, there is no basis on which the Prenup Order can piggyback on the Exceptions Order for an immediate appeal to this Court. Because Husband has not identified an exception to the final judgment rule applicable to the Prenup Order, we must dismiss his appeal of that order for lack of jurisdiction.

APPEAL OF PRENUP ORDER OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY DISMISSED; EXCEPTIONS ORDER OF SAID COURT AFFIRMED. COSTS TO BE PAID BY APPELLANT.