

Circuit Court for Baltimore County  
Case No. 03-C-17-000095

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 2903

September Term, 2018

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JOHNATHAN A. JAMES, SR.

v.

SUSANNA JAMES

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Nazarian,  
Arthur,  
Friedman,

JJ.

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Opinion by Arthur, J.

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Filed: March 3, 2023

\*At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

\*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.

The Circuit Court for Baltimore County entered an order of absolute divorce on the ground of a one-year separation. In the order, the court granted primary physical custody to the mother and ordered the father to pay child support.

The father asked the court to reconsider the order, but took what appeared to be a premature appeal while his motion to reconsider was pending. We remanded the case for a decision on the motion to reconsider, but said that we would treat the notice of appeal as though it had been filed immediately after the circuit court ruled on his motion.

For reasons that are unclear from the record, the circuit court appears not to have received this Court’s order until we re-sent it more than two years later. Once the court had received this Court’s order, however, it promptly denied the motion for reconsideration.

Now that the case is before us, we shall affirm the judgment.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

Appellant Johnathan A. James, Sr. (“Husband”) and appellee Susanna James (“Wife”) were married in 2014. They have one child together.

In January 2017 Husband filed a complaint for absolute divorce in the Circuit Court for Baltimore County. Wife filed a counterclaim and two amended counterclaims, in which she sought an absolute divorce. The parties asked the court to address child custody and child support.

The court held a merits hearing on August 13, 2018. On August 24, 2018, the circuit court entered a judgment of absolute divorce in favor of Wife. In its order, the court awarded Wife legal custody of the child, granted shared physical custody,

established a schedule for access to the child, ordered Husband to pay child support and child support arrearages, granted a monetary award in favor of Wife, and ordered that the marital home be sold and the proceeds be divided equally.

Meanwhile, on August 23, 2018, the day before the court entered its order, Husband had filed a motion for reconsideration. Under Maryland Rule 2-534, the motion for reconsideration is treated as though it were filed just after the clerk docketed the judgment of absolute divorce on August 24, 2018. Under Maryland Rule 8-202(c), the motion for reconsideration stayed the time for Husband to note an appeal until 30 days after the motion was withdrawn or denied.

On September 26, 2018, while the motion for reconsideration was still pending, Husband, representing himself, filed what he called a “Petition for De Novo.” In that document, Husband requested that the court vacate its order of August 24, 2018.

In the docket entry that records the filing of Husband’s motion for reconsideration, Maryland Judiciary Case Search states that the motion was denied on October 15, 2018. Nonetheless, neither Maryland Judiciary Case Search nor MDEC (or Maryland Electronic Courts) contain a separate entry reflecting the denial of the motion on that date. Furthermore, MDEC does not contain a copy of an order denying the motion.<sup>1</sup>

On November 15, 2018, Husband filed a notice of appeal. The following day, the court denied Husband’s “Petition for De Novo.”

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<sup>1</sup> As discussed below, the court actually signed an order denying the motion for reconsideration on October 4, 2018; the order, however, never made its way onto the circuit court’s docket, except for the brief and misplaced reference in the docket entry for the motion itself.

On June 15, 2019, Wife moved to dismiss Husband’s appeal. In support of the motion, she argued, among other things, that the notice of appeal was untimely.

In a written order, we denied the motion. Unaware that the circuit court had denied the motion for reconsideration in an order that was not properly docketed, we wrote:

[B]ecause the “Motion to Reconsider” has neither been withdrawn nor disposed of, [Husband’s] notice of appeal filed on November 15, 2018 was timely pursuant to Maryland Rule 8-202(c). The notice of appeal, however, must be held in abeyance until the circuit court disposes of the “Motion to Reconsider.”

This Court remanded the case to the circuit court for the limited purpose of deciding Husband’s motion to reconsider (which it had already done). We stayed the appeal pending the remand proceedings. In addition, we ordered that the notice of appeal would be treated as if it had been filed on the same day but after the circuit court’s order deciding the motion to reconsider.

On July 2, 2019, Wife filed, in the circuit court, a “courtesy copy” of a motion to reconsider this Court’s denial of her motion to dismiss. Wife represented that she had filed the motion in this Court. An exhibit to the motion is a copy of an order, dated October 4, 2018, by which the circuit court denied Husband’s motion to reconsider the order granting the absolute divorce. This Court has no record of Wife’s motion to reconsider the denial of her motion to dismiss or of the exhibits thereto.

Between July 2019 and March 2022, the circuit court took no action on remand. The circuit court’s docket entries suggest that the court took no action because it did not receive the order by which this Court remanded the case in July 2019.

On March 1, 2022, the clerk of this Court re-sent the order to the circuit court. On March 17, 2022, the circuit court entered an order (again) denying Husband’s motion for reconsideration. The clerk of the circuit court made a proper record of the order by entering it on the docket. In accordance with this Court’s order of July 2, 2019, Husband was deemed to have filed his notice of appeal immediately thereafter.

On September 8, 2022, we lifted the stay, and this appeal proceeded.

### **ISSUES PRESENTED**

In his informal brief, Husband presents three issues for our consideration, which we have rephrased as follows:

- I. Whether the circuit court abused its discretion in granting an absolute divorce in favor of Wife when there was no evidence to support any of the fault grounds she relied upon;
- II. Whether the trial judge was biased; and,
- III. Whether Husband was denied justice because of a delay in the court’s consideration of certain motions.<sup>2</sup>

For the reasons set forth below, we shall affirm.

### **DISCUSSION**

#### **I.**

Husband contends that the circuit court erred or abused its discretion in granting an absolute divorce because, he says, there was no evidence to support the three grounds that Wife raised: adultery, constructive desertion, and a one-year separation. We disagree

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<sup>2</sup> In his informal brief, Husband phrased the issues as follows: (1) “Abuse of discretion”; (2) “Judicial Bias”; and (3) “Justice Delayed is Justice Denied.”

that there was insufficient evidence to support the grant of a divorce on the ground of a one-year separation.

“In Maryland, the permissible grounds for divorce are governed by statute.” *Flanagan v. Flanagan*, 181 Md. App. 492, 509 (2008). Section 7-103(a)(4) of the Family Law Article (“FL”) of the Maryland Code (1984, 2019 Repl. Vol., 2021 Supp.) provides now, as it did at the time of the hearing below, that a court may decree an absolute divorce on the ground of a 12-month separation, “when the parties have lived separate and apart without cohabitation for 12 months without interruption before the filing of the application of divorce[.]” In this case, the court specifically stated that it granted the divorce on the basis of a one-year separation.

Husband disputes the court’s finding that the parties had been separated for the requisite 12 months. Under Maryland Rule 8-131(c), this Court “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.” In our judgment, the court’s finding was not clearly erroneous.

Wife, not Husband, sought a divorce the ground of a 12-month separation. Wife filed her initial counterclaim for divorce on February 6, 2017, and filed amended counterclaims on April 20, 2017 and June 7, 2017. Thus, the operative counterclaim at the merits hearing was the one filed on June 7, 2017. *See Wallace v. Wallace*, 290 Md. 265, 277 (1981); *Lyons v. Lyons*, 48 Md. App. 312, 317 (1981). Accordingly, for purposes of determining whether “the parties ha[d] lived separate and apart without

cohabitation for 12 months without interruption before the filing of the application of divorce,” the relevant 12-month period began on June 7, 2016.

Husband testified that Wife “left in February of ‘16,” that they “never lived together again,” and that they “lived apart since February 2016. On the basis of Husband’s testimony, the court could reasonably conclude that “the parties had lived separate and apart without cohabitation for 12 months without interruption before” June 7, 2017. Therefore, the court did not err in granting a divorce on the basis of a 12-month separation.

## II.

Husband contends that the trial judge was biased. In support of that contention, he cites the Code of Judicial Conduct, which was formerly codified at Maryland Rule 16-813 (2016), and has recently been recodified with minor revisions in Title 18 of the Maryland Rules.

Maryland Rule 18-100.1 sets forth the source and structure of the Code of Judicial Conduct as follows:

The substantive provisions and much of the structure of this Code are based in large part on the 2007 Model Code of Judicial Conduct proposed by the American Bar Association (ABA Model Code), although some of those provisions and some of the style and organization of this Code differ from the ABA Model Code. Most of the differences are necessary for consistency with the Maryland Constitution, Maryland statutes, and other Maryland Rules.

Husband’s assertions are based on the Maryland versions of ABA Rules 2.2, 2.5, and 2.6, which are codified as Rules 18-102.2, 18-102.5, and 18-102.6.

Maryland’s version of ABA Rule 2.2, found in Maryland Rule 18-102.2, addresses impartiality and fairness:

- (a) A judge shall uphold and apply the law and shall perform all duties of judicial office impartially and fairly.
- (b) A judge may make reasonable efforts, consistent with the Maryland Rules and other law, to facilitate the ability of litigants, including self-represented litigants, to be fairly heard.

Maryland’s version of ABA Rule 2.5, found in Maryland Rule 18-102.5, addresses the subjects of competence, diligence, and cooperation with other judges:

- (a) A judge shall perform judicial and administrative duties competently, diligently, promptly, and without favoritism or nepotism.
- (b) A judge shall cooperate with other judges and court officials in the administration of court business.
- (c) A judge shall not wilfully fail to comply with administrative rules or reasonable directives of a judge with supervisory authority.

Lastly, Maryland’s version of ABA Rule 2.6, found in Maryland Rule 18-102.6, addresses the right to be heard:

- (a) A judge shall accord to every person who has a legal interest in a proceeding, or that person’s attorney, the right to be heard according to law.
- (b) A judge may encourage parties to a proceeding and their attorneys to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

Husband takes aim at the court’s custody order, which granted Wife legal custody of the parties’ child and gave Husband access to the child on Wednesday nights and alternating weekends. He argues that the judge entered a “[d]isproportionate custody order giving more time to [Wife] for no other reason than she’s a woman.” He asserts



that no “evidence, evaluations or testimony shows father as being unfit, incapable, or unwilling to share equal custody.” Although he earned as much as \$61,000 per year when he worked on a full-time basis, he contends that the judge purposefully impoverished him by ordering him to pay \$960 per month in child support. He maintains that the judge did not consider the best interests of the child, and he seems to suggest that the judge was motivated by “the Title IV-D incentives this state receives for every new case.”<sup>3</sup>

Had Husband believed that the trial judge was biased or impartial, he could have filed a motion asking the judge to recuse himself. *See Jefferson-El v. State*, 330 Md. 99, 107 (1993). He filed no such motion. Therefore, he has waived his objection. *See, e.g., Miller v. Kirkpatrick*, 377 Md. 335, 358 (2003); *Conwell Law LLC v. Tung*, 221 Md. App. 481, 516-17 (2015); *Halici v. City of Gaithersburg*, 180 Md. App. 238, 255 n.6 (2008).

Even if Husband had not waived the issue of bias or partiality, he would fare no better. Our review of the record reveals no evidence to support Husband’s claim that the court awarded Wife more time with the parties’ child because she was a woman. Nor did the court base its decision on a finding that Husband was an unfit parent or that he was incapable or unwilling to share equal custody. To the contrary, in considering the required factors for a custody determination, the court specifically noted that the child

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<sup>3</sup> “Title IV-D” refers to Title IV, Part D, of the Social Security Act of 1975, under which the federal government makes grants to the States to assist in the enforcement of child support obligations.

had been living under a “very standardized set of visitation guidelines” and that, “with some slight modification, the present visitation schedule works, both for the child and the parents.” It is not, in itself, evidence of bias that the court declined to grant Husband an amount of time with his daughter that was equal to the time granted to Wife. *See generally Taylor v. Taylor*, 306 Md. 290, 297 (1986) (explaining that “[s]hared physical custody may, but need not, be on a 50/50 basis, and in fact most commonly will involve custody by one parent during the school year and by the other during summer vacation months, or division between weekdays and weekends, or between days and nights”).

Husband’s contention that the judge purposefully impoverished him has no merit. He complains that the court made decisions without his financial statement, but at the merits hearing he acknowledged that he did not file a financial statement. He complains about the contents of Wife’s financial statement, but he had an opportunity to cross-examine her, and did cross-examine her, about financial matters. He asserts that Wife lied, citing her testimony that she had no “money for car repairs but spen[t] thousands of dollars a month on vacations” In fact, although Wife initially testified that she spent \$12,000 on family vacations during one year, she later corrected her testimony to state that spent only about \$1,200 per year for vacations and that she did not have \$12,000. The court was free to view Wife’s initial testimony as a misstatement rather than a deliberate lie. *See* Md. Rule 8-131(c).

Lastly, the record does not support Husband’s claim of judicial bias in allegedly failing to consider the best interests of the child or in calculating child support. The record reflects that the court considered the best interests of the child in expressly

applying the factors enumerated in *Montgomery County Dep't of Social Services v. Sanders*, 38 Md. App. 406, 420 (1977), and *Taylor v. Taylor*, 306 Md. 290, 303-11 (1986). Furthermore, in calculating Husband's child support obligation, the court used the child support guidelines, which are set forth in FL § 12-204, and properly considered, among other things, the shared physical-custody arrangement. The record before us is devoid of any evidence that the trial court made its custody and child support decisions in order to obtain an incentive for the State of Maryland.

For all these reasons, even if they were properly before us, we would reject Husband's contentions about the trial judge's alleged bias or partiality.

### III.

Husband argues that he was denied justice because of the delay in the trial court's consideration of his motion for reconsideration.<sup>4</sup> He observes that the motion for reconsideration "was held for over two years before" the trial judge ruled on it. He points out that the judge who denied the motion was the same judge who presided over the divorce case. He argues:

Why would anyone expect a judge to revisit his own biases and abuse of power? To hold it for over two years shows he doesn't not [sic] care what is in the best interest of justice.

The record does not support Husband's assertion that the trial judge held onto the motion for reconsideration for over two years before ruling on it. Instead, from the absence of a docket entry in the circuit court, it appears that that court, for some reason,

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<sup>4</sup> In fact, the court had already denied the motion for reconsideration in October 2018, but the clerk failed to make a proper record of it.

did not receive the order of July 2, 2019, by which this Court remanded the case for a decision on the motion for reconsideration. No one, including the parties, took any action to address the ensuing delay until the Clerk of this Court re-sent the order to the circuit court on March 1, 2022. Once the circuit court had received the order, it acted promptly, issuing its ruling within barely more than two weeks.

For those reasons, we disagree with Husband’s contention that he was denied justice.

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