UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2196

September Term, 2013

CHRISTOPHER A. NELSON

v.

PATRICIA A. NELSON

Wright,
Reed,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: March 3, 2016

This appeal comes before us on a Petition for Contempt filed in the Circuit Court for Prince George's County. Patricia Nelson, appellee, sought and received a judgment against her ex-husband, Christopher Nelson, appellant, for violating the terms of a Consent Divorce Order/Property Settlement Agreement ("Settlement Agreement").

After a one-day hearing, the circuit court found appellant in contempt for violating a specific provision in the Settlement, wherein appellant agreed to pay appellee a lump sum of $31,775.00, and ordered him to pay to appellee a monetary judgment, plus costs. Appellant timely appealed that decision, and presents six questions for our consideration in his brief. For reasons discussed below, we have consolidated them as follows:[1]

[1] Appellant originally presented the following six questions in his brief, exactly as follows:

1. Were crucial and pertinent parts of CAPT NELSON's presented evidence unrightfully disallowed to come into evidence by [the trial court], which led to harmful results for his counterclaim against PAT NELSON? (E.58 – E.71)

2. Were crucial parts of CAPT NELSON's admitted evidence, such as the Parol Evidence and the Divorce Agreement, unrightfully under-valued or misunderstood by [the circuit court], which led to harmful results for his defense and counterclaim against PAT NELSON? (E.30 – E.46)

3. Did [the circuit court] demonstrate he greatly misunderstood and made erroneous assumptions in regard to how very sensitive a U.S. Military Officer's personal and professional reputation is when falsely accused of domestic and child abuse by his then-spouse, especially when the Officer holds a Top-Secret Security Clearance and performs highly sensitive and guarded Intelligence and Law Enforcement duties for the United States of America?

(continued…)

1. Did the circuit court err by finding appellant in constructive civil contempt?

2. Did the circuit court err in denying appellant's counterclaim?

For the following reasons, we answer both questions in the negative, and affirm the circuit court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

This matter is another chapter in the long and contentious divorce between appellant and appellee. The parties were lawfully married on May 10, 1997, in Gulf Shores, Alabama, and together had three children: Raeanna (born October 14, 2002), Donovan (August 12, 2004), and Carter (October 14, 2007). Due to "various unhappy differences," the couple voluntarily separated "with the intent of ending their marital relationship" on November 4, 2009. The parties sued (and counter-sued) each other for divorce, and the

4. Did [the circuit court] fail to appropriately impeach PAT NELSON's testimony and false complaints, when she was clearly shown by oral examinations to have made significant defamatory statements, both on the stand verbally and in sworn written statements? (E.103 – E.190)

5. Did [the circuit court] fail to recognize that CAPT NELSON cannot compel high ranking federal officials, legally controlled/bound by the Federal Government's Military, to come to State Court to prove or disprove information that would have significantly helped CAPT NELSON's case, however, it would have also damaged the reputation of the applicable United States military branch and some members thereof? (E.72 – E.74)

6. Did [the circuit court] unlawfully dismiss/ignore the testimony of PAT NELSON, where she admits to breaching the Divorce Agreement numerous times as she maliciously continued to assault CAPT NELSON's reputation and military career/livelihood, and then also fail to order her to comply and/or award damages to CAPT NELSON where currently due? (E.103 – E.190)

cases were subsequently consolidated. Following seven total days of trial and testimony regarding child custody, the Circuit Court for Prince George's County awarded appellant sole physical and legal custody of their three children on January 28, 2011.

After months of legal posturing and handwringing, the parties—neither side represented by counsel—signed and filed the Settlement Agreement and a contemporaneously-signed "Memorandum"—both of which were drafted by appellant—on September 6, 2011.

The Settlement Agreement provided, in pertinent part:

> **NOW, THEREFORE**, for and in consideration of the foregoing promises, and the promises and agreements hereinafter contained, and for other good and valuable consideration to each of the parties hereto from the other flowing [sic], the parties hereto agree and promise as follows:
>
> . . .
>
> **SIXTH (6th): DIVISION OF PERSONAL PROPERTY**
>
> . . .
>
> **C. Retirement, Deferred Benefit, Disability, Pension, 401(K) Plans, Etc.**
>
> The parties acknowledge that the parties are, were, or shall be participants in retirement, pension, disability, and/or deferred compensation plans through present or previous employment. *Each party hereby expressly waves any legal right he or she may have under any federal or state law as a spouse, or former spouse*, or person with an insurance interest, or otherwise, *to participate as a spouse or former spouse* or payee or alternate payee or beneficiary or otherwise in any pension, profit sharing, retirement, retirement annuity, survivor annuity, alternate annuity, deferred compensation, *IRA* . . . or similar plans, programs, or accounts held by the other party, including but not limited to the right to receive any benefit whether in the form of a monthly or periodic payment, lump sum distribution, or a lump sum death benefit, or a single and/or joint and survivor annuity, or a pre-retirement survivor annuity, or a survivor annuity, or otherwise. . . .
>
> . . .
>
> **ELEVENTH (11th): MODIFICATIONS**
>
> Except as otherwise provided by law or as specifically agreed upon by the parties herein, none of the provisions of this Agreement shall be subject to modification by any Court. Modification or waiver of any of the

provisions of this Agreement shall be effective *only if made in writing and executed with the same formality as this Agreement*. Failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

. . .

SIXTEENTH (16th): ATTORNEY'S FEES AND COSTS

The parties agree that each party shall pay their own counsel fees for all legal services rendered or to be rendered in connection with the preparation and execution of this Agreement, and with respect to any other matter or thing whatsoever; except, however, that in the event of any breach of this Agreement [sic] the breaching party shall pay all reasonable attorney's fees, suit costs, and court costs incurred by the other party for enforcing any provision of this Agreement or Order of Court incorporating this Agreement.

SEVENTEENTH (17th): MERGER

The parties shall be bound by the terms and provisions of this Agreement and any action between them which is now pending, or may, in the future, be instituted, and that this Agreement shall be disclosed to the Court, and with the approval of the Court, *shall be ratified, confirmed, approved and incorporated into the judgment of the Court, but shall not be construed as having been merged therein*, and shall survive and be forever binding and conclusive upon the parties.

. . . .

(emphasis added).

The "Memorandum," signed and notarized contemporaneously with the Consent Divorce Order/Property Settlement Agreement, provided, in pertinent part:

> This memorandum documents that Christopher A. Nelson (Husband) and Patricia A. Nelson (Wife) agree to certain actions if a mutual divorce agreement, regarding case numbers CAD09-41268 and CAD10-06789 (consolidated cases), is signed, executed, and finalized/filed by both parties in a court of law. Those actions are:
>
> . . .
>
> 2. Husband agrees to provide Wife $31,775.00 (thirty-one thousand seven-hundred and seventy-five U.S. dollars) via electronic/wire bank transfer, bank/teller check, or other certified funds within 30 days of the divorce being finalized / absolute in the court of law responsible for it.

> 3. Husband and Wife agree to drop any past or present complaints with the other party as the 'subject'/object thereof and assist in whatever way possible so that such complaints will be settled and cease to negatively affect the other party.
>
> . . . .

Both parties appeared, *pro se*, before the Circuit Court for Prince George's County for a merits hearing on the appellant's Complaint for Absolute Divorce on September 19, 2011. On September 22, 2011, the circuit court granted the parties' absolute divorce, and ordered that the Settlement Agreement be "incorporated but not merged" into the Judgment of Absolute Divorce. Around a month later, appellant cut a check for appellee for $31,775.00, in accordance with their agreement.

The instant action began when the appellee received a letter from the Internal Revenue Service ("IRS") on February 14, 2013, notifying her that she had underreported her 2011 taxes and that she was responsible for a $15,627.00 deficiency. Appellee claims that she "learned through her conversations with Vanguard [Fiduciary Trust Co.]," the investment company responsible for the difference in reported income with the IRS, that they were under the impression she was still married to appellant and that "the amount of $45,880 was transferred from [appellee's] Roth IRA account in appellee's name . . . into a joint savings account at USAA Federal Credit Union" in both appellant and appellee's names. Appellee then requested that Vanguard send a letter confirming the transactions, which she received on March 28, 2013. [*Id.*]. That letter stated, in pertinent part:

> Dear Ms. Nelson:
>
> We recently received a request for a confirmation of the following transactions occurring in your Vanguard Roth IRA® in 2011.

> On October 12, 2011, a distribution of $31,775.00 was transferred from your Roth IRA to your savings account . . . at USAA Federal Savings Bank, owned by Christopher A. Nelson and Patricia A. Nelson.
>
> On October 26, 2011, a distribution of $14,104.76 was transferred from your Roth IRA to your savings account . . . at USAA Federal Savings Bank, owned by Christopher A. Nelson and Patricia A. Nelson.

Using the account number provided by Vanguard, appellee claims she then contacted USAA about the savings account in which Vanguard claimed the money from her Roth IRA was transferred. During that conversation, appellee was informed that the account number was "an actual joint savings account but it had never had [a]ppellee's name on it." Appellee had USAA also confirm this in writing, which it did in an April 8, 2013 letter. In addition, appellee also provided copies of the USAA Federal Savings Bank statement showing a $31,775.00 deposit into an account bearing appellant's name and their three children's names, but not appellee's.

According to appellee, the interactions with Vanguard and USAA reminded her of several emails from appellant in 2011 regarding her taxes. In those emails, appellant advised appellee that she should not file her 2010 taxes "until [appellant had] a chance to help [appellee] with them." He went on to warn her that she "might get in trouble" with the IRS if she did not speak to him before filing them, and that if she wanted to report her taxes "correctly," she needed to allow him to "help [her] file them." This was also apparently the first time she saw that appellant had told her that he was taking money out of a "spousal Roth IRA [appellant] funded from [appellant's] pay." Appellee then contacted an attorney

and filed her Petition to Hold Defendant in Contempt of Court and for Other Relief on April 30, 2013, alleging that appellant was in contempt of the divorce order for directing Vanguard to transfer the money from her spousal IRA into the USAA account. Appellant filed a Response on August 13, 2013, denying those allegations and alleging appellee was knowingly lying about the transaction. Appellant also filed a counterclaim, alleging that appellee damaged his career in the Air Force and "refused to assist to correct [sic] the damages she inflicted" on his career.

After several weeks, the matter came for a hearing on October 7, 2013, in front of the same trial judge that oversaw the divorce proceedings in the Circuit Court for Prince George's County. After the one-day hearing, the circuit court found in favor of the appellee, and granted her a judgment of $45,879.76. The court noted that "[appellant] admit[ed] there was no joint account" and that "[e]very reasonable inference suggests" that appellant told Vanguard that the money was being transferred to a joint account. The court stated that "[i]f there is an ambiguity [in the Settlement Agreement], it would be construed against the drafter, and in this instance the drafter admittedly was [appellant]." Ultimately, the court decided that "[f]or [appellant] to suggest that he's making her a gift in some fashion of $31,775 when it's her Roth IRA, he's giving her what is already hers at least in title," was a "stretch of credibility." The circuit court found "nothing ambiguous in [the court's view] about this," because there was a "clear waiver" in the Settlement Agreement to any retirement benefits of the other party.

The court then went on to deny appellant's counterclaim because it was unable to find any harm to his career, because the "burden of proof" was on appellant to prove harm

and "to speculate on just the bald unsupported testimony here today that he didn't get a promotion because of this, without anything from the Air Force, without anybody here, . . . defies credibility in [the court's] view as well." The court also granted $5,000.00 in attorney's fees, because "[appellee] clearly had a reason to bring this action, and . . . it was bad faith on [appellant's] part to try to defend giving her her [sic] own money and claiming his magnanimous effort [sic]."

Appellant filed a Motion to Alter or Amend Judgment on November 1, 2013, which was denied by the circuit court on November 27, 2013. Appellant noted his timely appeal on January 14, 2014.

DISCUSSION

A. Parties' Contentions

Appellant contends that the circuit court "made several mistakes while presiding over . . . [the 2010 divorce proceedings], and some of those . . . mistakes carried forward" into the contempt proceedings. These mistakes include "rejecting fair and true evidence, misremembering and/or outright forgetting accepted facts and credible testimony, blatantly disregarding court-ordered findings (such as psychologist evaluations and counseling records), and gross errors in character analysis." Specifically, these "mistakes" include "unrightfully disallow[ing]" certain "crucial" parts of evidence; "unrightfully under-valu[ing]" "crucial" parts of admitted evidence, such as "the Parol Evidence and Divorce Agreement"; both failing to "appropriately impeach" appellee's testimony and choosing to "unlawfully dismiss/ignore" the appellee's testimony regarding her compliance with the

Settlement Agreement; and, what we will summarize as, "misunderstanding" the military implications of these proceedings.

Appellee, on the other hand, argues that most of appellant's allegations "are laced with attempting to have the Court of Special Appeals 'retry' the case before them," and as such, did not address most of appellant's questions presented. Appellee instead asks us to "only focus on the appeal at hand," which consists of "1) [t]he Roth IRA in [appellee's] name was taken by [appellant], admittedly, breaching the divorce contract," and "2) [m]ilitary issues that were resolved in military court cannot be 'retried' in civilian court and there was no evidence admitted proving the results of the military issues."

B. Standard of Review

While appellant appears to seek review of both the divorce proceedings and the contempt proceedings, in this appeal, we review only the latter. *See Unnamed Attorney v. Attorney Grievance Commission*, 303 Md. 473, 483 (1985) ("A contempt proceeding, even though it may grow out of or be associated with another proceeding, is ordinarily regarded as a collateral or separate action from the underlying case and as separately appealable, with appellate review normally limited to the contempt order itself.").

"An appellate court may reverse a finding of civil contempt only upon a showing that a finding of fact upon which the contempt was imposed was clearly erroneous or that the court abused its discretion in finding particular behavior to be contemptuous." *Gertz v. Maryland Department of Environment*, 199 Md. App. 413, 423 (2011) (internal quotations and citation omitted). In reviewing a determination of constructive civil contempt,

> [w]e review factual findings upon which a contempt order is premised to determine if they are clearly erroneous. It is not our task to re-weigh the credibility of witnesses, resolve conflicts in the evidence, or second-guess reasonable inferences drawn by the court, sitting as fact-finder. Rather, the evidence and all inferences drawn therefrom must be viewed in the light most favorable to . . . the prevailing party . . . ."

Id. at 430 (citations omitted). "[U]nder the clearly erroneous standard . . . [o]ur task is limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record. And, to that end, we view all the evidence in a light most favorable to the prevailing party." *Goss v. C.A.N. Wildlife Trust, Inc.*, 157 Md. App. 447, 456 (2004) (internal quotations and citation omitted).

C. Analysis

From the outset, it should be noted that appellant seems to fundamentally misunderstand both the scope of our review and the extent to which it is limited. We agree with the appellee's contention that it appears as though appellant is seeking to re-litigate the majority of the parties' divorce proceedings in the Court of Special Appeals.

For the purposes of this appeal, our job is essentially to determine whether, in the light most favorable to appellee, the circuit court's decision to find appellant in contempt based on the circumstances surrounding the retirement account payment was supported by substantial evidence in the record. Our job is *not*, however, to act as the second "bite of the apple" and scrutinize every decision made by the trial court in which appellant feels aggrieved. In that vein, if we were to simply address appellant's questions presented as stated by him in his brief, this appeal could essentially be summarily denied, as we fail to see any cognizable challenge to the trial court's decision set forth by appellant.

Nevertheless, in light of the circumstances of this case, and for the sake of completeness, we will treat appellant's claims, "however inartfully pleaded,"[2] as they were rephrased above.

By both the terms of the Settlement Agreement and the circuit court's Judgment of Absolute Divorce, the terms of the Settlement Agreement were "incorporated, but not merged" into the divorce decree. "The terms of a separation agreement which has been incorporated, but not merged, into a divorce decree are enforceable either through contempt proceedings or as an independent contract." *Langston v. Langston*, 366 Md. 490, 505 (2001), *abrogated on other grounds by Bienkowski v. Brooks*, 386 Md. 516 (2005); *see also* Md. Code, § 8-105(a) of the Family Law Article.[3]

[2] *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) ("A document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.") (internal quotations and citations omitted).

[3] Section 8-105 of the Family Law Article provides:

> (a)(1) *Enforcement authority of court*. The court may enforce by power of contempt the provisions of a deed, agreement, or settlement that are merged into a divorce decree.
>
> (2) The court may enforce by power of contempt or as an independent contract not superseded by the divorce decree the provisions of a deed, agreement, or settlement that contain language that the deed, agreement, or settlement is incorporated but not merged into a divorce decree.
>
> (b) *Modification by court*. The court may modify any provision of a deed, agreement, or settlement that is:
>
> (1) incorporated, whether or not merged, into a divorce decree; and
>
> (2) subject to modification under § 8-103 of this subtitle.

Further examination of the Settlement Agreement and the contemporaneous Memorandum dictate: (1) each party expressly waived any right to the other's retirement accounts, and (2) appellant agreed to pay the sum of $31,775.00 to appellee. Based on the evidence and testimony before it, there was "no question" to the circuit court that appellee was entitled to a judgment on both that amount and the IRS deficiency. The trial court, after stating that it believed appellee when she said she did not authorize the transfers, explained that

> [e]very *reasonable inference* [could] be drawn that the only way [appellant] could have pulled that money out of that account from Vanguard would be to transfer it to an account with her name on it in some fashion. Every *reasonable inference* suggests that that's [sic] what he told them. And yet it wasn't a joint account. It didn't exist that way.

(emphasis added). Viewing the evidence in the light most favorable light to appellee, and given that it is not our task to "second-guess reasonable inferences drawn by the court," we cannot say that the trial court's finding of contempt was clearly erroneous. After receiving the IRS deficiency notice, appellee, rather meticulously, documented her conversations with both Vanguard and USAA. Those documents, taken together and as considered by the circuit court, tend to suggest that appellant attempted to satisfy his obligations under the Memorandum by paying appellee with her own money. Such a situation clearly supports a finding of contempt.

Turning briefly to appellant's counter-claim, we find his argument equally unavailing. Appellant devotes much of his brief to presenting anecdotal and argumentative evidence, much of which is far beyond the scope of this appeal, and again illustrates how appellant apparently misunderstands the nature of our appellate system. Our review of his

counter-claim is confined to the record of the contempt hearing—not, as appellant would have us, re-weigh the credibility of witnesses or second-guess the circuit court's findings of fact in his divorce proceedings.

The circuit court, in denying the counter-claim, plainly stated that it

> heard about two, maybe three complaints with any specificity. They were unsubstantiated. He won the court [martial]. There is a suggestion that all of her complaints, how many complaints were ever resolved in her favor? Zero. If the complaints were not resolved in her favor they were resolved in his favor, then where is the harm to his career and to speculate just on the bald unsupported testimony here today that he didn't get a promotion because of this, without anything from the Air Force, without anybody here, to suggest that that was it, defies credibility in my view as well.
>
> Okay. Were the complaints substantiated? Maybe not. Domestic violence complaints require clear and convincing evidence. I heard the testimony before, we went through so much of that stuff some years ago. Maybe. Didn't have clear and convincing evidence. But for a preponderance of the evidence, no question there was emotional abuse in my mind and many of these complaints may well have been justified. Again, I'm not going to repeat all the comments I made in the original trial, it's all of record. But it's there.
>
> To then ask me to speculate, even if I did see that there was some sort of harm to his career, to speculate that he would have continued a successful career and made other money and had more promotions or anything else, I can't speculate.
>
> I've got to deny this, the burden of proof is on [appellant] to prove the harm to his career, and I can't find that there's harm to his career. The Air Force was here that entire custody case, I'm sure they would have a handle on this case. So I'm going to deny the counter complaint . . . .

The record clearly supports such a finding. At the hearing, the only witnesses who testified regarding the counter-claim were the two parties to this appeal. The decision to admit or exclude evidence "has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *North v.*

North, 102 Md. App. 1, 14 (1994). Appellant presented no evidence—other than his self-serving conclusions and inadmissible hearsay—that would have supported his claim.

While he is apparently much aggrieved over the circuit court's refusal to entertain the fact that appellant had no power to compel military members to testify in his civilian court proceedings, that decision is of no concern to us in this appeal. The court's decision to deny the counter-claim was based on the fact that appellant was unable to substantiate any of his claims regarding the alleged breach of contract. The circuit court did not commit an abuse of discretion, nor was it clearly erroneous, in denying appellant's counter-claim.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.