Circuit Court for Anne Arundel County
Case No. C-02-FM-23-002899

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 128

September Term, 2024

SAMANTHA K. BURKE FRISBEE

v.

ALEXANDER E. FRISBEE

Berger,
Nazarian,
Ripken,

JJ.

Opinion by Berger, J.

Filed: March 14, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In this appeal from a divorce matter pending in the Circuit Court for Anne Arundel County, Samantha K. Burke Frisbee ("Wife") requests appellate review of two interlocutory orders: (1) an order denying Wife's motion to set aside the parties' marital settlement agreement; and (2) an order precluding Wife from seeking discovery related to matters resolved by the agreement. For the reasons explained herein, we lack appellate jurisdiction, and therefore, must dismiss the appeal.

FACTS AND PROCEEDINGS

Alexander E. Frisbee ("Husband") and Wife were married in 2014. They are the parents of one child, who was born in 2020.

On August 14, 2023, Husband filed a complaint for absolute divorce on grounds of mutual consent. Filed along with the complaint was a marital settlement agreement ("MSA") signed by the parties. Among other things, the MSA provided that the parties mutually waived their claims for alimony and a share of the other party's retirement interests. The parties also agreed that Wife would have primary custody of their child, and that Husband would pay Wife $1,200 a month in child support. In addition, the parties affirmed that marital property had been divided to their mutual satisfaction. Wife filed an answer in which she admitted all allegations in Husband's complaint and requested that the court grant an absolute divorce.

On September 26, 2023, Wife filed a pleading requesting the court to set aside the marital settlement agreement on grounds of fraud, duress, undue influence, and unconscionability. She subsequently served discovery requests upon Husband and

subpoenaed information related to Husband's assets. Husband filed a motion for an order quashing the subpoenas and precluding Wife from seeking discovery on matters resolved by the MSA. The court granted Husband's motion and ordered that Wife was precluded from seeking discovery related to matters resolved by the MSA pending a hearing on Wife's motion to set aside.

On March 14, 2024, following an evidentiary hearing, the court entered an order denying Wife's motion to set aside the MSA. The court found that Wife had the benefit of independent counsel; that she was aware of the extent of Husband's assets; that she freely and voluntarily waived her right to alimony and retirement benefits; that she was not under duress at the time she signed the agreement; and that the terms of the agreement were not unconscionable.

Wife filed this appeal on March 14, 2024. On March 18, 2024, Wife filed a motion in the circuit court asking the court to schedule a disposition hearing. As grounds for her motion, Wife represented that, without a final judgment, her appeal could not proceed. Husband opposed the motion to schedule a disposition hearing, arguing that the court could not finalize the divorce until the issue of the validity of the MSA is resolved by this Court. The court declined to schedule a disposition hearing and stayed the matter pending a resolution of this appeal.

DISCUSSION

"[U]nless constitutionally authorized, appellate jurisdiction 'is determined entirely by statute,' and therefore, a right of appeal only exists to the extent it has been 'legislatively

granted.'" *Mayor & City Council of Baltimore v. ProVen Mgmt., Inc.*, 472 Md. 642, 665 (2021) (quoting *Gisriel v. Ocean City Bd. of Supervisors of Elections*, 345 Md. 477, 485, (1997)). "'[P]arties cannot confer jurisdiction on our Court, and we must dismiss a case *sua sponte* on a finding that we do not have jurisdiction.'" *Johnson v. Johnson*, 423 Md. 602, 606 (2011) (quoting *Miller and Smith v. Casey PMN, LLC*, 412 Md. 230, 240 (2010)).

Generally, a party "may appeal only from a final judgment rendered by the trial court." *Pattison v. Pattison*, 254 Md. App. 294, 307 (2022) (citing Md. Code (1973, 2020 Repl. Vol.) § 12-301 of the Courts and Judicial Proceedings Article ("CJP")) (additional citation omitted). "A final judgment is one that settles all the claims against all the parties." *Id.* (citations omitted). The purpose of the final judgment rule is to "'promote judicial economy and efficiency' by preventing piecemeal appeals after every order or decision by a trial court." *In re C.E.*, 456 Md. 209, 221 (2017) (quoting *Sigma Reprod. Health Ctr. v. State*, 297 Md. 660, 665 (1983)).

"[T]here are several exceptions to the final judgment rule: (1) appeals from interlocutory orders allowed by statute; (2) immediate appeals allowed under [Maryland] Rule 2-602; and (3) appeals allowed under the collateral order doctrine. *Pattison*, 254 Md. App. at 307 (citing *Md. Bd. of Physicians v. Geier*, 451 Md. 526, 546 (2017)). "The purpose of these exceptions is to 'allow appeals from orders other than final judgments when they have a final irreparable effect on the rights of the parties.'" *Id.* (additional citation and some internal quotation marks omitted). "This Court does not acquire jurisdiction over an appeal unless it is taken from a final judgment or from an interlocutory

order that falls within one of the exceptions to the final judgment requirement." *Bartenfelder v. Bartenfelder*, 248 Md. App. 213, 229 (2020) (citing *Bessette v. Weitz*, 148 Md. App. 215, 232 (2002)).

Recognizing that a final judgment has not been entered, Wife maintains that this Court has appellate jurisdiction pursuant to a statutory exception in § 12-303 of the Courts and Judicial Proceedings Article. In pertinent part, that statute provides:

> A party may appeal from any of the following interlocutory orders entered by a circuit court in a civil case:
>
> * * *
>
> (3) An order:
>
> * * *
>
> (v) For the sale, conveyance, or delivery of real or personal property or the payment of money . . . unless the delivery or payment is directed to be made to a receiver appointed by the court.
>
> * * *
>
> (x) Depriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order[.]

Wife maintains the terms of the MSA "decided, *pendente lite*," issues of child custody, child support, alimony, and property division. Therefore, according to Wife, the order denying her motion to set aside the MSA is immediately reviewable as an order for the payment of alimony or child support.[1] We disagree.

[1] Husband does not address the jurisdictional issue in his brief.

The legislative history of CJP § 12-303(3)(v) was examined in *Della Ratta v. Dixon*, 47 Md. App. 270, 285 (1980). Judge Wilner, writing for this Court, noted that the "common thread" in cases where the exception was held to apply "is that each involves an order for a specific sum of money which 'proceeds directly to the person' and for which that individual is 'directly and personally answerable *to the court* in the event of noncompliance.'" *Id.* at 285. A *pendente lite* order for the payment of alimony or child support is immediately appealable under CJP § 12-303(3)(v) as an order for the payment of money. *Pappas v. Pappas*, 287 Md. 455, 463 (1980). *Accord Bussell v. Bussell*, 194 Md. App. 137, 147 (2010).

By contrast, an interlocutory order that "settle[s] the respective rights of the parties . . . by adjudicating that A owes B a certain amount of money" but "does not purport to order anyone to do anything" is not an order for "the payment of money" within the meaning of CJP § 12-303(3)(v).[2] *Della Ratta*, 47 Md. App. at 285-86. The rationale is that "[u]nlike an order to pay alimony or child support, the judgment debtor is not answerable to the court for failing to discharge the judgment." *Id.* at 285.

[2] Pursuant to CJP § 12-303(3)(vi), an interlocutory appeal may be taken from an order "[d]etermining a question of right between the parties and directing an account to be stated on the principle of such determination[.]" This provision does not apply here because, even though the March 14, 2024, order may have determined "a question of right between the parties[,]" it did not include "directing an account to be stated[.]"

Here, the order denying Wife's motion to set aside the MSA does not constitute an order for the payment of alimony or child support.[3] The court merely settled the rights of the parties by determining that the MSA was not unenforceable due to fraud, duress, undue influence, or unconscionability. Accordingly, the order does not fall within the exception in CJP § 12-303(3)(v).[4]

Wife presents no argument to support a claim that the interlocutory order precluding her from conducting discovery is subject to appellate review at this time. *See Klauenberg v. State,* 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal."). In any event, we note that "'it is well settled in Maryland that discovery orders usually are not immediately appealable.'" *St. Luke Inst., Inc. v. Jones*, 471 Md. 312, 338 (2020) (quoting *Baltimore City Dep't of Soc. Servs. v. Stein*, 328 Md. 1, 14 (1992)).

In sum, no final judgment has been entered in the underlying case, and there is no applicable exception that provides authority for this Court to review the interlocutory

[3] Indeed, the parties' agreement as to the amount of child support remains subject to review and approval by the court. *See Walsh v. Walsh*, 333 Md. 492, 503-04 (1994) ("When a judge approves and incorporates an agreement of the parents into an order of support, the judge must do more than merely rubber stamp anything to which the parents agree. Judges have an obligation to assure that children do not suffer because of any disparate bargaining power of their parents.")

[4] The issue of whether an interlocutory order denying a request for *pendente lite* child support and alimony is appealable under CJP § 12-303(3)(v) is currently before the Supreme Court of Maryland in *Adelakun v. Adelakun*, No. 35, Sept. Term 2024, *cert. granted*, November 22, 2024. We perceive no reason to stay the resolution of this appeal pending a decision in *Adelakun*. Just as the order dated March 14, 2024 did not order the payment of alimony or child support, neither did it deny a request for such an order.

orders challenged by Wife.[5] Accordingly, we must dismiss the appeal for lack of jurisdiction.

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

[5] Wife does not assert that the order denying her request to set aside the MSA is appealable under another exception to the final judgment rule. We conclude, however, that no other exception applies. For an interlocutory order to be immediately appealable pursuant to Maryland Rule 2-602(b), the court must "expressly determine[] in a written order that there is no just reason for delay" and "direct in the order the entry of a final judgment (1) as to one or more but fewer than all of the claims[.]" That is not the case here. Moreover, the exception allowing immediate appeal of a collateral order does not apply to a ruling upholding a marital settlement agreement because the objecting party retains the right to appeal and challenge the court's ruling, therefore, the issue of the enforceability of the agreement is not "effectively unreviewable on appeal." *Pattison v. Pattison*, 254 Md. App. 294, 310 (2022).