Circuit Court for Montgomery County
Case No. C-15-FM-23-000014

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1078

September Term, 2024

IRIS CHAN

v.

WAIPAN CHAN

Friedman,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: February 18, 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 persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Iris Chan, Appellant, has appealed an interlocutory order by the Circuit Court for Montgomery County that rescinded the voluntary separation agreement which had been incorporated into her judgment of divorce from Waipan Chan, Appellee. In her brief and at oral argument, Ms. Chan argued that the circuit court decision was immediately appealable under the collateral order doctrine.

The circuit court order rescinding the voluntary separation agreement is not a final order. Therefore, the focus of this opinion is whether this order is immediately appealable under the collateral order doctrine.

Ms. Chan presents the following questions for review:[1]

1) Does the Appellate Court have jurisdiction to hear this interlocutory appeal pursuant to the collateral order doctrine?
2) Did the circuit court erroneously rescind the voluntary separation agreement of the parties?
3) Did the circuit court erroneously find that the main goal of the voluntary separation agreement was for the parties to continue to reside together until the end of the 2023-2024 school year?

[1] Mr. Chan presents the questions as follows:

1) Does this Court have appellate jurisdiction where the circuit court's order that rescinded the parties' voluntary separation agreement is not a final judgment and is not immediately appealable under the collateral order doctrine?
2) Was the trial court's decision to rescind the parties' voluntary separation agreement legally correct?

Under the first question, we hold that the circuit court's recission of the voluntary separation agreement was not appealable as a collateral order, and we dismiss this appeal. Consequently, we do not need to address the second and third questions in this opinion.

BACKGROUND

Iris Chan and Waipan Chan were married in 2011. They are the parents of two daughters born in 2013 and 2018. The circuit court made oral findings that beginning in September 2022, the parties began discussions about entering into a voluntary separation agreement. Ms. Chan, who was represented by counsel, presented a draft agreement to Mr. Chan, who was not represented by counsel. A final voluntary separation agreement was executed by the parties in December 2022.

In January 2023, Ms. Chan filed a complaint for absolute divorce in the Circuit Court for Montgomery County, and Mr. Chan filed an answer to the complaint as a *pro se* litigant. After a hearing on February 22, 2023, the voluntary separation agreement was incorporated, but not merged, into the judgment of absolute divorce, which was entered on March 8, 2023.

The circuit court determined that, under the voluntary separation agreement, the parties had agreed to continue living in the marital home together for an additional one-and-one-half years until the end of the 2023-24 school year. It is Mr. Chan's position that the purpose of this provision was so that one daughter could continue a gifted-and-talented program at her current school which concluded at that time. Instead, Ms. Chan moved out of the marital home in January 2023, one month after she had signed the

voluntary separation agreement. In addition, on March 17, only nine days after the judgment of divorce was entered, Ms. Chan filed as a separate legal action a complaint requesting that the court appoint a trustee to sell the marital home, even though she had agreed to continue to reside there under the terms of the voluntary separation agreement. In addition, Ms. Chan stopped allowing the children to spend overnight visits with Mr. Chan in April 2023. Then, Ms. Chan moved to Howard County in August 2023 and enrolled the children in new schools without consulting Mr. Chan even though the parties had joint legal custody.

In response to these actions, Mr. Chan obtained legal counsel and filed a motion to find Ms. Chan in contempt of court for violating the terms of the voluntary separation agreement, or in the alternative, to rescind the agreement. The circuit court held a contempt hearing on June 13, 2024, and issued oral findings of fact at a separate proceeding on July 8. These findings of fact addressed the parties' incomes and whether certain items of marital property were jointly or separately titled. The court also considered the timeline of Ms. Chan's decisions to move out of the house, move the children, and deny visitation to Mr. Chan.

In a written *pendente lite* order, the circuit court rescinded the voluntary separation agreement on the grounds that Ms. Chan had materially breached the agreement. In addition, the circuit court ordered a hearing be held on the merits for custody and the division of marital assets. In an oral ruling, the circuit court judge stated this would be a full merits hearing and specified that child custody will be determined, child support will

be finally adjusted, marital property will be divided, and attorney's fees will be determined. In the interim, the *pendente lite* order set forth temporary terms for custody, visitation, and child support.

Ms. Chan timely filed a notice of appeal, and the circuit court granted her motion to stay proceedings on the merits until this appeal is decided. After briefing by the parties, this court heard oral arguments on January 10, 2025.

DISCUSSION

Subject to certain exceptions, a party may appeal only from a final judgment rendered by a trial court. Md. Code Ann., Cts. & Jud. Proc. Art. ("CJ") §12-301 (2020 Repl. Vol.). Generally, "[t]he right to seek appellate review . . . must await the entry of a final judgment, disposing of all claims against all parties." *Shoemaker v. Smith*, 353 Md. 143, 165 (1999). To constitute a final judgment, the trial court's determination must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding. *Nnoli v. Nnoli*, 389 Md. 315, 324 (2005) (citing *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)). We look to whether any future order was to be issued or whether any further action was to be taken in a case to determine whether an order or ruling is a final appealable judgment. *Id.* An order that is not a final judgment is an interlocutory order and ordinarily is not appealable unless it falls within one of the limited exceptions. *Id.*

There are three limited exceptions to the final judgment rule under which interlocutory orders may be appealed in Maryland: (1) appeals from interlocutory orders

specifically allowed by statute; (2) immediate appeals permitted under Maryland Rule 2-602; and (3) appeals from interlocutory rulings allowed under the common law collateral order doctrine. *Salvagno v. Frew*, 388 Md. 605, 615 (2005).

Neither party here asserts the circuit court's recission of the voluntary separation agreement was a final judgment. Nor does Ms. Chan argue that there is an exception provided specifically by Maryland statutes or rules.[2] Instead, Ms. Chan argues that this court has jurisdiction under the collateral order doctrine.

To fall within the very limited collateral order doctrine exception, four requirements must be met. The order must (1) conclusively determine the disputed question, (2) resolve an important issue, (3) be completely separate from the merits of the action, and (4) be effectively unreviewable on appeal from a final judgment. *See, e.g.*, *Ehrlich v. Grove*, 396 Md. 550, 563 (2007). Based upon the facts before us, the issues

[2] Section 12-303 of the Courts and Judicial Proceedings Article provides certain instances in which a party may appeal from an interlocutory order. The only potentially relevant situation here is under 12-303(3)(x) which provides that a party may appeal from an order "[d]epriving a parent, grandparent, or natural guardian of the care and custody of his child, or changing the terms of such an order[.]" Section 12-303 was not raised by either party and is therefore not analyzed in this opinion. Neither parent here claims to have been deprived of the care and custody of their children nor has the original custody arrangement been significantly changed. *See In re Karl H.*, 394 Md. 402, 430 (2006) ("In determining whether an interlocutory order is appealable, in the context of custody cases, the focus should be on whether the order and the extent to which that order changes the antecedent custody order."). Here, the *pendente lite* order issued by the court on June 12, 2024, generally kept the same custody and visitation arrangement with slight variations in an altered holiday schedule, changed drop-off/pick-up hours, and added Zoom access twice a week for Father. The crux of the custody arrangement remains the same that the parents share legal custody with Mother having primary physical custody and Father having visitation every other weekend.

considered by the circuit court in rescinding the voluntary separation agreement are not completely separate from the merits, and the order therefore fails the third prong of the collateral order doctrine.

Ms. Chan does not cite to any authority to specifically establish that the order and the merits are completely separate, but instead merely offers conclusory statements that the issues are separate. Ms. Chan does, however, cite to *Clark v. Elza* more generally to establish that the collateral order doctrine applies. In *Clark v. Elza*, 286 Md. 208 (1979), there was a personal injury complaint for damages ensuing from an automobile accident. The parties made an oral agreement prior to trial, but the plaintiffs subsequently refused to execute a release. The defendants filed a motion to enforce the settlement agreement, which the court denied.

The Supreme Court held that the enforceability of the settlement agreement had absolutely nothing to do with the merits of the tort action because the circuit court relied on the settlement agreement being an executory accord and not a substituted contract in holding it unenforceable. The Court noted that this is a factual question that speaks to whether the parties intended to create an executory accord or a substitute contract. *Id.* at 214-15. This issue clearly had nothing to do with the merits of the underlying automobile accident tort claim.

Ms. Chan argues this case is akin to *Clark v. Elza* because both cases deal with a circuit court decision not to give effect to a settlement agreement. She quotes *Clark*'s discussion of the four factors but only relates *Clark* to the first factor in the present case

before concluding that "based on the holding of the Supreme Court in *Clark*," this court has jurisdiction to hear this appeal.

In response to Ms. Chan's reliance on *Clark*, Mr. Chan cites to *Pattison v. Pattison*, 254 Md. App. 294 (2022). In *Pattison*, the husband moved to enforce a marital settlement agreement, and the circuit court granted his motion. *Id.* at 299, 305. The Appellate Court of Maryland held that the circuit court's interlocutory order granting the husband's motion to enforce was not appealable under the collateral order doctrine. *Id.* at 309. In so holding, the court relied on the fourth prong as not being satisfied to determine that the interlocutory order was not appealable. *Id.* at 310. The parties had both argued, and the court did not determine one way or the other, that the first three prongs were met. *Id.* at 309. On the third prong, the parties argued that "the issue regarding the enforceability of the agreement, which mainly addressed the disposition of the parties' property, was separate from the ultimate question whether a divorce should be granted." *Id.* Our third prong, however, is distinguishable from the third prong in *Pattison*. While the disposition of property may have been completely separate from whether a divorce should have been granted, here the issues are much more intertwined.

We are not convinced by Ms. Chan's contention that the issues concerning whether the voluntary separation agreement should be rescinded are completely separate and distinct from issues at the merits trial which, she concedes, would include a custody determination. Here, the ultimate question is not whether a divorce should be granted, as in *Pattison*, but rather how child custody should be determined, how marital property will

be divided, how much child support the parties will pay, and whether attorney's fees should be awarded, all of which were contemplated by the rescinded voluntary separation agreement. In the agreement, the parties agreed that they would live together in the marital home until the end of the 2023-2024 school year. After the parties no longer resided together, Ms. Chan was to have primary physical custody with Mr. Chan having visitation every other weekend. The parties were to have joint legal custody. Once Ms. Chan moved out of the marital home, the circuit court determined that the custody provisions in effect after the 2023-2024 school year should have been followed.

In rescinding the voluntary separation agreement due to Ms. Chan's material breach, the circuit court had to consider whether these custody provisions were being honored and found that they were not. To determine that the voluntary separation agreement was materially breached, the court considered that Ms. Chan left the marital home, moved the children with her, and enrolled them in a different school without consulting Mr. Chan. Moreover, she then denied Mr. Chan overnight visitation with the children.

The hearing on the merits will reconsider the issue of custody, and, relevant to this consideration, are Ms. Chan's denials to Mr. Chan of the decision-making power and visitation time the parties had agreed to which the circuit court found to be material breaches of the agreement. Furthermore, in deciding to rescind the voluntary separation agreement, the circuit court addressed facts related to marital property. Similar findings

of fact will need to be addressed at the hearing on the merits to determine the division of marital property to replace the division agreed upon in the rescinded agreement.

The collateral order doctrine is a "very narrow exception" to the rule that appeals to this court must be based on a final order, and "the four requirements of the [doctrine] are very strictly applied . . . ." *County Commissioners for St. Mary's County v. Lacer*, 393 Md. 415, 428 (2006). *See also* Kevin F. Arthur, *Finality of Judgments and Other Appellate Trigger Issues* 50 (3d ed. 2018). In light of a very strict application of the third requirement that the order must be "*completely* separate from the merits," and the overlap between the material breach of the voluntary separation agreement and a custody decision at a full merits hearing, we must hold that the collateral order doctrine is not met here.

CONCLUSION

This appeal does not satisfy the test required for an appeal under the collateral order doctrine. The third requirement is not met because, in deciding to rescind the voluntary separation agreement, the circuit court had to consider the current custody arrangement and violations thereof. The order, therefore, is not completely separate from the merits. Because the third prong is not met here, the collateral order doctrine is not satisfied. This appeal is dismissed.

APPEAL DISMISSED.
COSTS TO BE PAID BY APPELLANT.