Circuit Court for Anne Arundel County
Case No. C-02-CV-22-002205

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1433

September Term, 2023

MARINA A. BAUTISTA HERNANDEZ

v.

ALFREDO SEGURA JAIME

Berger,
Albright,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wilner, J.

Filed: November 20, 2024

* 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 with Rule 1-104(a)(2)(B). Md. Rule 1-104.

Before us is an appeal from an order of the Circuit Court for Anne Arundel County entered on August 22, 2023 (1) directing that a mobile home that, according to a Certificate of Title issued by the Maryland Motor Vehicle Administration ("MVA"), is co-owned by appellant and appellee as tenants in common, be sold, (2) that the proceeds of the sale be divided equally between appellant and appellee, but (3) that the costs of the sale be paid from appellant's 50 percent share. This was intended by appellee, and accepted by the court, to be a sale in lieu of partition. The mobile home was resting on land designated at 4747 Flanders Lane, Trailer I, Harwood, MD 20766, in which neither party had any ownership interest.

The case reaches us on a default; actually, there were two defaults by appellant. Appellee filed his complaint for sale in lieu of partition on December 13, 2022. A writ of summons was served on appellant on December 17. When no timely response was filed, appellee, on January 18, 2023, requested an order of default, and, on January 24, an order of default was entered. Three days later, through counsel, appellant moved to vacate that order. That motion was docketed on February 1 and was granted on March 3, 2023.

Also on February 1, appellant moved to dismiss appellee's complaint on the principal ground that the property at issue— the mobile home—was personal property, not real property, and that "no Maryland law provides for a 'sale in lieu of partition' of personal property except in the context of divorces, annulments, and in the administration of decedent estates." Appellant contended also in that motion that appellee was not a true co-owner but, at best, may have a lien interest in the mobile home. She averred that, as a

paramour of appellant, he lived with appellant and her mother for a while in Riverdale and, when the mobile home had to be relocated to make room for the relocation of the Maryland Department of Transportation's "Purple Line," appellee's name was added to the title because appellant and her mother could not afford the rent at the new location and the moving expenses on their own. Appellee, they claimed, contributed to those expenses, but, when the romance ended, he left the mobile home in July 2018 and had contributed nothing since then.

Appellee responded to the Motion to Dismiss on March 18, 2023, contending that (1) Rule 12-401 authorizes both partitions and sales in leu of partition of both real and personal property, (2) the MVA Certificate of Title clearly established appellee's status as a registered owner of the mobile home, and (3) the question of who paid what was not relevant for purposes of a motion to dismiss. Two days later, on March 20, 2023, the court entered an order denying appellant's motion to dismiss which was followed, on April 26, 2023, with an order of default and giving appellant 30 days within which to vacate that order.

On July 6, 2023, the court, noting that the time for appellant to move to vacate that order had expired, set the case in for a default hearing. That occurred on August 22, 2023. Noting that neither appellant nor counsel for appellant was present, the court ordered that the mobile home be sold, and the proceeds be divided 50/50 between appellant and appellee, with any costs to be paid by appellant out of her share of the proceeds.

That was not the end of this saga. On August 29, 2023, through counsel, appellant moved to vacate the default and for a new trial. Appellee opposed those motions, and, on September 5, 2023, the court denied them. The motion to vacate the default judgment was denied as untimely. A deficient appeal was filed on September 21, 2023. The deficiency—lack of a civil information report—was corrected the next day.

Appellant raises one complaint in this appeal—that the Circuit Court erred in ordering the sale of the mobile home without first determining whether the mobile home was real property or personal property. This is important, appellant claims, because the law applies differently to personal property than it does to real property.

The general scope of our review is set forth in Rule 8-131(c), namely, that when an action was tried without a jury, as this one was, the appellate court will review the case on both the law and the evidence, but will not set aside the judgment of the trial court on the evidence unless the judgment is clearly erroneous and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses. In this case, there was no trial as such. The case was decided on a finding of a default on the part of appellant to create a triable issue of fact, though given a fair chance to do so.

It is true that, when dealing with such items as a mobile home that rests on real property, an issue may arise whether the mobile home has become so physically attached to the real property that it has become part of it, as a fixture. The law regarding that was explained in *Droney v. Droney*, 102 Md. App. 672, 685 (1995).

The court there accepted the definition of "fixture" approved in *Black's Law Dictionary*—"an article in the nature of personal property which has been so annexed to the realty that is regarded as a part of the real property . . . A thing is deemed affixed to real property when it is attached to it by roots, imbedded in it, permanently resting upon it, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws." *Id*. At 685-86. The *Droney* court added:

> To resolve the question of whether an item is personalty or realty, there are several factors to consider: the nature of annexation (*i.e.*, actual or constructive); the degree to which the land has been adapted to accommodate the use of the object; the ease with which the object may be removed without damaging the property; and the intent of the parties (which can be inferred from the nature of the object as well as the context of is use and annexation) citing *Dermer v. Faunce*, 191 Md. 495, 500, *on reh'g*, 191 Md. 501 (1948).

Droney at 686.

As noted, in this case, appellant had every opportunity to present evidence regarding those matters but defaulted on each of them. Accordingly, there was no evidence of any of those impediments; nor should the court have presumed their existence in the absence of such evidence, especially since appellant and her mother, who lived there, would have known better than anyone what the current situation was. The case was decided on the basis of their default. We find no basis for reversal.

JUDGMENT AFFIRMED. APPELLANT TO PAY THE COSTS.