

Circuit Court for Baltimore County
Case No.: C-03-FM-21-004929

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1680

September Term, 2022

MICHAEL OWENS

v.

DANIELLE OWENS

Reed,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 30, 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.

Michael Owens, appellant, appeals from a judgment by the Circuit Court for Baltimore County granting his wife Dannielle Owens, appellee, an absolute divorce, rehabilitative alimony, a monetary award as division of the marital property, and child support.¹ On appeal, Michael presents three issues for our review, which we reduce to two: (1) whether the circuit court erred in entering the Order of Default and preventing him from participating at the hearing with respect to alimony and division of the marital property; and (2) whether the court erred in awarding Danielle child support. For the following reasons, we shall affirm in part and vacate in part.

In September 2021, Danielle filed a complaint against Michael. In addition to an absolute divorce, she sought rehabilitative alimony, equitable distribution of the marital property, and child support. Michael was served but when he did not file an answer, the court entered a default order against him. He then moved to vacate the order, which the court granted, but he still did not file an answer. Consequently, the court entered a second default order. Michael did not move to vacate this order, but instead filed a counterclaim.

The circuit court held a hearing in November 2022, at which both parties were present. The court determined, however, that “the Order of Default . . . prevent[ed] [Michael] from participating in the proceedings.” The court then heard testimony and evidence from Danielle regarding the grounds for divorce, alimony, and division of the marital property. Michael was not permitted to cross-examine Danielle or present evidence

¹ Because the parties involved here have the same last name, for ease of understanding we shall refer to them by their first names. We mean no disrespect by doing so.

on these issues. Danielle also testified and presented evidence regarding the grounds for child support. In contrast to the other issues, the court believed it was “in the best interests of the child” to allow Michael to participate in the proceedings with respect to child support. It therefore permitted him to cross-examine Danielle and present his own testimony and evidence on that issue. The court ultimately awarded Danielle an absolute divorce, alimony, a monetary award, and child support. This appeal followed.

Michael first contends that the circuit court erred in entering the Order of Default and preventing him from participating at the hearing with respect to alimony and division of the marital property. Obtaining a default judgment is, in effect, a two-step process. *See Franklin Credit Mgmt. Corp. v. Nefflen*, 436 Md. 300, 315–18 (2013) (discussing history behind default judgment rule). As to the first step, “[i]f the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default.” Md. Rule 2-613(b). This order is “a determination of liability” that will be overturned only if the order is vacated. *Franklin Credit*, 436 Md. at 317 (cleaned up). If the defaulting party does not move to vacate the default order, “[t]he issue of liability is foreclosed[.]” *Flynn v. May*, 157 Md. App. 389, 405 (2004) (cleaned up). As to the second step, “where the relief to which the party obtaining the judgment is entitled remains to be determined, the defaulting party has the right to participate in any hearing for that purpose and to present evidence on the issue.” *Miller v. Miller*, 70 Md. App. 1, 22 n.11 (1987).

In domestic litigation, the issue of divorce falls on the “liability” side of this dichotomy, and the issues that flow therefrom fall on the “relief” side. *Wells v. Wells*, 168

Md. App. 382, 396 (2006). These include child custody, visitation, support, alimony, distribution of marital property, use and possession, and counsel fees. *Id.* at 397. Consequently, a defaulting party in a divorce case still has the right to present evidence and participate in any hearing on those issues. *See id.*; *Miller*, 70 Md. App. at 22 n.11.

Michael does not contest that he failed to file an answer before the time for pleading expired. Nor does he contest that the clerk properly issued the notice required by Maryland Rule 2-613(c). He also conceded at the circuit court hearing that he had not filed a motion to vacate the default order. The circuit court therefore did not err in entering the default order. Md. Rules 2-613(b) & (c). That order combined with Danielle’s corroborative testimony foreclosed the issue of divorce. *See Flynn*, 157 Md. App. at 405–06 (noting that a default judgment in a divorce action requires corroborative testimony before it may be entered).

At the hearing on relief, however, the court forbade Michael from being heard on any issue other than child support. That was error. Despite his status as a defaulting party, Michael still had the right to present evidence and participate on the issues of child support, alimony, and distribution of marital property. With respect to the issues of alimony and distribution of marital property, there was “manifest prejudice” to Michael in the court’s refusal to let him participate. *See Melrod v. Melrod*, 83 Md. App. 180, 193 (1990). By refusing to allow Michael to participate, “the court created a situation in which it, as the trier of fact, had before it only [one party’s evidence] and none supporting the other party’s position.” *Id.* Contrary to Danielle’s argument on appeal, “[t]he basic unfairness of that situation” is not harmless. *Id.* We therefore vacate the circuit court’s judgment with respect

to these two issues and remand for a hearing on them at which both parties are permitted to participate and present evidence.

Michael next contends the circuit court erred in awarding Danielle child support. In contrast to the other issues, however, Michael was allowed to participate and present evidence with respect to the issue of child support. And on appeal, he presents only factual allegations not raised at the hearing despite his opportunity to do so. Consequently, they are not preserved for our review, and we decline to address them. *See* Md. Rule 8-131. We will therefore affirm the circuit court’s judgment with respect to this issue.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID TWO-THIRDS BY APPELLANT AND ONE-THIRD BY APPELLEE.