UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 089, 1374 & 2296

September Term, 2014

CONSOLIDATED CASES

JOE DEAN CRAWFORD

v.

CARRIE MAE HOLMES CRAWFORD

Meredith,
Nazarian,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 11, 2016

"Eighty percent of success is showing up."

Woody Allen[1]

Joe Dean Crawford ("Husband") initiated divorce proceedings in April 2013, and Carrie Holmes Crawford ("Wife") responded with a counterclaim for absolute divorce of her own. Mr. Crawford unsuccessfully (and repeatedly) sought alimony *pendente lite*, and his complaint was eventually dismissed when he failed to appear at trial. He has filed three separate appeals: *first*, after being denied an emergency hearing regarding alimony *pendente lite* prior to the scheduling conference; *second*, after the court dismissed his complaint; and *third*, after the circuit court denied alimony *pendente lite* and declined to stay the divorce decree (entered on Wife's counterclaim) pending resolution of his first two appeals. We consolidated his three appeals, dismiss the first for lack of a final judgment or appealable order, and otherwise affirm.

I. BACKGROUND

The Crawfords were married in 1976, and had eight children during their marriage, all of whom were adults by the time of these proceedings. By October 2011, the parties had separated. Husband filed a Complaint for Absolute Divorce on April 24, 2013 in the Circuit Court for Prince George's County, and Wife counterclaimed for absolute divorce on November 25, 2013. After unsuccessfully attempting to strike Wife's counterclaim, Husband requested, among other things, alimony *pendente lite*, and filed a motion asking the court to hold an emergency hearing on the matter. In an order entered March 7, 2014,

[1] Fred R. Shapiro, *The Yale Book of Quotations* 17 (2006).

the court denied the request and stated that the parties would schedule a hearing at a scheduling conference four days later. Rather than waiting, Husband noted his first appeal, designated as Appeal No. 089 of our 2014 Term.

On March 11, 2014, the parties attended a scheduling conference, at which time a magistrate attempted to work through the couple's marital property disputes and to discern whether Mr. Crawford was entitled to alimony *pendente lite*. Unfortunately, the parties failed to produce specific (or consistent) information,[2] and the magistrate was unable to resolve either. So the magistrate reserved ruling on Mr. Crawford's request for temporary alimony, told the parties that "it's all going to be heard at your merits trial," and urged them to bring updated financial documentation and tailored arguments to trial on June 12, 2014.

Late in the afternoon of June 11, 2014, however, Husband filed a motion to postpone the trial. His motion was set for a hearing on the following morning's docket before the continuance judge. But Husband did not appear on June 12, either to argue his motion for a continuance or to appear for trial. Wife did appear, though, ready for trial and with a corroborating witness. The court denied Husband's motion for a continuance from the day before, then went forward with the scheduled merits hearing that afternoon. During that hearing, Wife and her witness testified that the parties had been separated for over a year, and Wife told the court that she was not seeking a marital award or alimony. Husband was

[2] Despite being asked precise questions (often multiple times), Husband failed to detail the actual monthly expenditures that justified his alimony request, and Wife was unable to elaborate on her alleged *in*ability to pay alimony. The magistrate explained, "Despite the fact that[] there's, you know, an Amazon rainforest worth of paper in this file at this point, I really don't have much information."

not present, either to refute Wife's presentation, or to support *his* requests for a marital award and alimony.

On June 19, 2014, the circuit court entered an order granting Wife's counter-claim for absolute divorce, dismissing Husband's complaint, and closing the case. On June 30, Husband filed a motion to alter or amend the June 19 order, and on July 14, 2014, he noted his second appeal, No. 1374. The court eventually denied Husband's motion to alter or amend the June 19 order.

In September, Husband filed another motion seeking alimony *pendente lite* pending appeal, for a stay of the divorce decree pending appeal, and to recuse the County Administrative Judge on the grounds of alleged gender bias. These motions were denied on December 8, and Husband filed his third notice of appeal, No. 2296, on December 30, 2014. We consolidated the three cases, and provide additional facts as necessary below.

II. DISCUSSION

These appeals come to us on three discrete procedural postures: *first*, from the circuit court's March 7, 2014 order denying Husband's request for an emergency hearing regarding his request for alimony *pendente lite*; *second*, from the dismissal of Husband's complaint; and *third*, from the December 8, 2014 denial of Husband's motions for alimony *pendente lite* and to stay the effect of final judgment pending appeal. The myriad of issues Husband presents on appeal, taken together, challenge the circuit court's substantive findings (or lack thereof) regarding alimony and marital property, the denial of his repeated

requests for alimony *pendente lite*, the dismissal of his complaint and motions for alimony *pendente lite* without first holding a hearing, and the merits of the divorce decree.[3]

A. Husband's First Appeal Is Dismissed.

Husband's first appeal stems from the circuit court's refusal to grant an emergency hearing to address his request for alimony *pendente lite*. He mischaracterizes the court's decision both as a denial of alimony *pendente lite* and a denial of his request for a hearing.[4] But the actual effect of the court's order was not as Husband asserts, nor did it create an appealable issue: the circuit court simply directed Husband to wait until the upcoming

[3] Husband's *verbatim* questions are provided with each appeal below.

[4] Husband phrased his Questions Presented in Appeal No. 089, September Term 2014, as follows:

> 1. Is order denying a written hearing request on motion for alimony *pendente lite* a final and appealable order under the collateral order doctrine?
>
> 2. Is order a denial of due process to deny a *pro se* litigant a requested hearing on marital property?
>
> 3. Is order a denial of equal protection of the laws to deny indigent *pro se* litigant a requested hearing on marital property?
>
> 4. Is it error to dispose of a claim for alimony *pendente lite* without providing a requested hearing?
>
> 5. Is it error to refuse to consider emergency motion for alimony *pendente lite* from indigent for several months?

scheduling conference to schedule a hearing to address the merits of his alimony *pendente lite* request.

Generally speaking, we only review final judgments that dispose of all claims against all parties. *See Pittsburgh Corning Corp. v. James*, 353 Md. 657, 660-61 (1999). One narrow exception, the collateral order doctrine, permits appeals prior to final judgment from orders that satisfy all four of the following criteria:

> (1) it must conclusively determine the disputed question;
> (2) it must resolve an important issue;
> (3) it must be completely separate from the merits of the action; and
> (4) it must be effectively unreviewable on appeal from a final judgment.

Town of Chesapeake Beach v. Pessoa Constr. Co., 330 Md. 744, 755 (1993) (quoting *Peat & Co. v. Los Angeles Rams*, 284 Md. 86, 92 (1978)). This doctrine is "narrow in scope" and applies "only in extraordinary circumstances." *Kurstin v. Bromberg Rosenthal, LLP*, 191 Md. App. 124, 144, 145 (2010) (internal quotations and citations omitted).

Husband's first appeal fails at the first step of the collateral order test. The order he appealed did not determine (let alone conclusively) the merits of his request or his ability to be heard on the issue.[5] His appeal suffers two fatal mistakes: *first*, he conflates his request for an emergency hearing with a constitutional right to be heard on certain issues,

[5] Husband's first appeal also appears to fail the fourth prong of the test, but we need not venture that far. *In re Franklin P.*, 366 Md. 306, 327 (2001) ("[E]ach of the four elements must be met.").

and *second*, he glosses over the first prong of the test by minimizing the court order to "[t]he trial judge said 'no.'"

As Husband acknowledges, Md. Rule 2-311(f) entitles a party to a hearing if the party made a proper request *and* the court's decision would dispose of a claim or a defense. This Rule and the first prong of the collateral order doctrine share the underlying requirement that the order at issue actually disposes of a claim. That's not what happened, though, in the order Husband appealed—Rule 2-311(f) doesn't apply here, and no other authority entitled him to an emergency hearing.

The court's order explained that Husband's requests for a hearing and interim alimony were "denied in part, it being provided that a *pendente lite* hearing may be scheduled at the scheduling conference set for March 11, 2014." Rather than dispose of his requests for alimony *pendente lite*, the court order merely denied his request for an *emergency* hearing so that all hearings related to the divorce proceedings could be scheduled together. The delay, such as it was, would have been four days. But the length of delay isn't relevant: interlocutory appellate review is not available for a decision denying a request for an emergency hearing on alimony. Husband's first appeal, No. 089, is dismissed.

B. The Circuit Court Did Not Err In Dismissing Husband's Complaint.

When Husband failed to appear for trial, the court granted Wife's counterclaim for absolute divorce, dismissed Husband's complaint for absolute divorce for his failure to

prosecute, and closed the case.[6] Husband appeals the court's judgment, arguing *first* that the court usurped the assigned judge's authority, rendering its order void, and *second*, that the court erred by not raising and deciding issues Husband had raised in his pleadings.[7]

1. Dismissal was an appropriate sanction for failure to appear.

When Husband didn't appear for trial, the court dismissed his complaint, which left Wife's counterclaim as the operative pleading. Husband appealed, but waited until his reply brief to take issue with this particular decision, then raised it again in his third appeal. Because he failed to include this question in the opening brief of his second appeal, the

[6] Husband also filed a motion to alter or amend the judgment and requested a hearing. In that motion, he complains that the judge did not consider issues of alimony, pension, and marital property that, he says, were raised, and argues as well that the court erred by not ruling on his motion for a continuance. But Husband did not appeal the denial of his motion to alter or amend the court's judgment, and the time to do so has long since lapsed.

[7] In Appeal No. 1374, September Term 2014, Husband raised these issues:

1. Are divorce orders void where they issued from judge not assigned as trial judge for divorce proceedings?

2. Is it reversible error for judge to ignore marital property identified in pleadings by both Appellant and Appellee?

3. May unassigned judge usurp assigned trial judge function and rule on motion for continuance?

4. Is it denial of due process for judge to deny hearing on claim for marital property?

5. May another judge usurp authority of trial judge and deny motion for alimony *pendente lite* pending appeal?

issue is waived. But even if we look past the waiver, we find no abuse of discretion in the court's decision to dismiss Husband's complaint. In its order, the court stated that it dismissed the complaint for "failure to prosecute," a phrase that might suggest dismissal under Maryland Rule 2-507. The court didn't cite that provision, though, and the record demonstrates that the dismissal was meant (and rightfully) as a sanction for Husband's failure to appear.

In *Zdravkovich v. Siegert*, the plaintiff moved five days before trial for a continuance due to illness and attached a letter from his doctor, but the court denied that motion. 151 Md. App. 295, 300 (2003). On the date of trial, the plaintiff filed a motion for reconsideration, but did not appear at the motions hearing, and the court denied the motion. *Id.* at 301-02. Later that day, the court called the case for a trial on the merits, as scheduled; the plaintiff had still not arrived, but one defendant (out of several) was there. *Id.* at 302. The court dismissed the plaintiff's case against *all* defendants[8] based on the plaintiff's failure to appear. *Id.*

On appeal, we noted that, "[w]hile the Maryland Rules contain no rule dealing specifically with the court's inherent power to dismiss a case *sua sponte* when the plaintiff fails to appear on the day of trial, the Court of Appeals has acknowledged that a trial court may, without abusing its discretion, grant judgment in favor of a defendant when the plaintiff fails to appear for trial." *Id.* at 306 (footnote omitted). We explained that we defer

[8] The defendant who appeared moved to dismiss for failure to appear, and the judge granted that motion, and dismissed *sua sponte* the case against the remaining defendants for the same reason. *Id.*

to the trial court's decision to dismiss a case, and only disturb the court's ruling for a clear abuse of discretion, in recognition of the circuit court's real-life obligation to manage its docket. *Id.* at 307-08.

We see no abuse of discretion here. Husband sought emergency hearings to address his requests for alimony *pendente lite*, and appealed to this Court after the circuit court declined to hold an immediate hearing or make an immediate award. He repeatedly sought temporary alimony and attempted to expedite proceedings, but when his trial date finally came, he opted to not appear, and he offered no reason(s) that cause us to second-guess the circuit court's assessment. Absent more compelling circumstances, and the record reveals none, the trial court's dismissal of Husband's complaint was a reasonable sanction for his willful failure to appear.

2. The judge did not overstep her authority.

Husband then contests the authority of particular judges to make particular decisions in this case. He contends that one judge (the judge who presided over the family division) was the only judge eligible to enter judgments in the entire life of his divorce proceedings, and that any orders entered by other judges should be vacated for usurping the presiding judge's exclusive authority. Accordingly, he argues, the trial judge exceeded her authority in dismissing the complaint and denying his request for alimony *pendente lite*.

The case ended up before three judges in rapid succession because of Husband's eleventh-hour motion to postpone. The motion sent the proceedings to the judge hearing continuance motions that day. But as the continuance judge noted, "just because he filed [a motion for a continuance] doesn't mean it's going to be granted," and after the motion

was denied, the case returned for the scheduled merits hearing. And the back-and-forth left some uncertainty about which judge would hear the case—the continuance judge explained to Wife that "I'm going to deny his motion to postpone and—but we'll just have to see if a Judge can pick it up. If I finish this hearing, then I'll take it. If not, then we'll have another Judge take it and handle it."

This sort of movement between merits judges and motions judges is routine procedure in the trial courts. Husband contends, though, that the circuit court's Differentiated Case Management Plan ("DCMP") limited each individual judge's authority; that the "Family Division Coordinating Judge" "is and has been the only assigned judge to matters of divorce . . ."; that the continuance judge could hear the motion for continuance only if there had been a record of the absence of the coordinate judge and her backup; and that the presiding judge otherwise lacked "apparent authority" to hear and decide any matters. Of course, the coordinating judge's responsibility is to coordinate, not to decide every issue in every case, and a judge's internal assignment doesn't limit her authority in any event. *See* Md. Rule 16-202(a), (b); *Strickland v. State*, 407 Md. 344, 359 (2009) (Rules vest authority in Chief Judge of the Court of Appeals, Circuit Administrative Judges, and County Administrative Judges to assign judges for trials and hearings in the court). Indeed, the Committee note to Rule 16-204(a)(4)(A) states that "[n]othing in this Rule affects the authority of a circuit court judge to act on any matter within the jurisdiction

of the circuit court." The court made three different judges available for different purposes over the course of the day, all of whom fulfilled their roles appropriately.[9]

3. The court had no responsibility to raise *sua sponte* the issues in Husband's complaint.

From there, Husband argues that the court erred by not addressing at trial, on its own, the allegations he raised in the complaint that the court had (properly) dismissed.[10] He complains as well that the court's failure to raise these issues *sua sponte* effectively denied him the opportunity to be heard on the division of marital property. This latter proposition may be true, but again, he forfeited his opportunity to litigate his claims, and it would not have been appropriate for the court to raise and litigate them on his behalf.

The record reveals that Husband had repeated notice of this trial date. The March 7 order noted a future merits hearing, and on March 11, the magistrate told the parties numerous times that they should be prepared to address the alimony request at the June 12 hearing; a transcript of that hearing was served on both parties. And Husband's own motion acknowledges that he had notice: he stated, in his last-second filing, that an

[9] In his third appeal, Husband claims that he was not given notice of the "secret and unscheduled hearing" that took place on June 12, and that only Wife was informed. But that's demonstrably untrue: in his motion for postponement, Husband listed reasons that "prevent[] [him] from appearing on June 12, 2014."

[10] Husband argues in his third appeal that the coordinating judge's March 7, 2014 order required the court to address his request for alimony *pendente lite* at trial, and the court's failure to do so on its own usurped the coordinating judge's authority. And he's right that the court decided that the trial was the appropriate time to address the merits of his requests. He lost that opportunity, though, when he failed to appear.

(unexplained) "emergency [] prevents him from appearing on June 12, 2014."[11] The June 12 hearing transcript reveals that the continuance judge expressly denied (four times on the

[11] Husband's motion listed the following reasons for his requested continuance:

1. Lack of funds to hire an attorney due to Court's denial as a reservation from making a decision on the Motion(s) for Alimony Pendente Lite.

2. The time set aside for trial is insufficiently short as Plaintiff would approximate that it would take nearly 3 days rather than 3-5 hours for the Court to hear all the testimony, cross-examinations, and evidence needed to be presented.

3. Plaintiff has no desire to try this case on his own and the refusal to provide funds by way of alimony pendente lite highly prejudices his efforts at justice and would unduly burden the Court as Plaintiff is not an experienced attorney in these complex matters.

4. Plaintiff has not been able to obtain whereabouts of Defendant to negotiate or to advance.

5. The Court has requested that Plaintiff seek legal counsel but has instead refused to award any alimony despite its findings.

6. The Court has refused me process required under the law by requiring that Plainiff pay a set fee for issuance of subpoena when no fee for issuance appears in law or rule of the Courts of Maryland nor it's Legislature.

7. The assigned judge (Cathy Serrette) has either recused herself informally, or this case bears notice of no assigned judge as error that cannot be corrected by the Plaintiff.

8. Plaintiff has not been able to obtain subpoenas and therefore cannot call witnesses without Court process and without funds to pay witnesses for their appearances.

short record) Husband's motion to postpone the trial. Then, that afternoon at trial, the court asked Wife, the only party present, if she wished to raise any issues of alimony or marital awards, and she did not. Had Husband appeared for trial, he would have had a full opportunity to raise and prove his claims. But he wasn't there and, as we have already held, his complaint was properly dismissed.

We agree with Wife: "The case has been prolonged to almost 3 years because the same issues that were brought forth in 2014 have been expanded into three separate appeals, issues that could have been heard during the planned June 12, 2014, Merit Hearing . . . ." Husband didn't attend the trial, which was his opportunity to raise these substantive issues. He moved to postpone the day before it was scheduled, and left the court no time to rule on his motion for continuance prior to the scheduled hearing, then proceeded under the (unreasonable) assumption that his motion had been or would be granted. Husband's failure to appear, by no fault other than his own, resulted in his waiver of the opportunity to be heard on the merits, and to then appeal those findings. This leaves nothing for us to consider on appeal, *Jones v. State*, 379 Md. 704, 712 (2004) ("The second sentence of Rule 8-131(a) sets forth the general proposition that an appellate court ordinarily will not consider an issue that was not raised [in] or decided by the trial court." (emphasis omitted)), other than the circuit court's dismissal of Husband's complaint, which we already have affirmed.

C. The Circuit Court Did Not Abuse Its Discretion In Denying Husband's Requests Pending Appeal.

Husband's third appeal challenges the circuit court's denial of his motions for alimony *pendente lite* and requests that the effect of the court's divorce decree be stayed pending appeal. Husband leaps straight to the issues of his alimony claim, rehashing issues that were (or should have been) raised elsewhere.[12] But any rights he could, in theory, have

[12] Mr. Crawford phrased the Questions Presented in Appeal No. 2296, September Term 2014, as follows:

> 1. Did the trial court properly determine ownership and valuation of all marital property?
>
> 2. Did the trial court properly deny a monetary award and adjustment of the equities of the parties?
>
> 3. Did the trial court properly determine ownership and valuation of all pensions and retirement benefits?
>
> 4. Did the trial court err in not including as marital property the property held by both parties as tenants by entireties at Gunther Street in Capitol Heights?
>
> 5. May lower court deny a hearing on a motion for alimony, alimony *pendente lite*, or alimony *pendente lite* pending appeal without first holding a requested hearing?
>
> 6. Is it reversible error for lower court judge dismiss active divorce complaint and claim for marital property on basis of 'failure to prosecute' without prior notice and opportunity to defend? Rule 2-507
>
> 7. Where judge assigned to divorce proceedings was absent, may judge not assigned as part of County Circuit Case Management Plan to hear divorces conduct a contested divorce where marital property division required by statutes?

to interim relief—and we are not saying he has any—would derive entirely from the merits of his claims in the trial court, the same claims we have dismissed or affirmed above. As such, the court did not abuse its discretion in denying him interim relief pending appeal. *See Letke Security Contractors, Inc. v. United States Surety Co.*, 191 Md. App. 462, 474 (2010) ("An abuse of discretion exists when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles." (internal quotations and citations omitted)).

APPEAL NO. 089 DISMISSED. JUDGMENTS OF THE CIRUCIT COURT FOR PRINCE GEORGE'S COUNTY IN APPEALS NOS. 1374 AND 2296 AFFIRMED. COSTS TO BE PAID BY APPELLANT.