

Circuit Court for Anne Arundel County
Case No. 02-C-12-169848

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2463

September Term, 2016

CHRISTA BELLANCA

v.

MICHAEL GRIM

Wright,
Beachley,
Fader,

JJ.

Opinion by Beachley, J.

Filed: February 14, 2018

*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.

On July 15, 2016, appellant Christa Grim (“Christa”) filed a motion seeking to enforce the terms of a marital settlement agreement, and to rescind and reopen the marital property provisions of that agreement. Appellee Michael Grim (“Michael”) moved to dismiss. After a hearing, the Circuit Court for Anne Arundel County granted Michael’s motion to dismiss, but gave Christa leave to amend her motion to enforce.

Christa filed an amended motion to enforce, and Michael again moved to dismiss. Following a hearing on January 5, 2017, the circuit court dismissed with prejudice Christa’s amended motion. Christa timely appealed and presents the following issue for our review:

Did the trial court err in dismissing [a]ppellant’s Motion to Enforce the Terms of the Marital Separation Agreement as being barred by *Hresko v. Hresko*, 83 Md. App. 228 (1990)?

We hold that the court did not err, and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because Christa appeals the circuit court’s granting of Michael’s motion to dismiss, we are required to “presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom.” *Higginbotham v. Pub. Serv. Comm’n of Md.*, 171 Md. App. 254, 264 (2006) (quoting *Britton v. Meier*, 148 Md. App. 419, 425 (2002)). Accordingly, our factual recitation presumes the truth of the facts alleged in Christa’s pleadings.

The parties married in late 1997, and after separating in 2011, they executed a Marital Settlement Agreement (the “Agreement”) on January 14, 2012. The Agreement purported to resolve all issues arising out of their marriage, including child support,

alimony, and the division of the parties' real and personal property. On March 22, 2013, the circuit court issued a Judgment of Absolute Divorce, in which the Agreement was incorporated, but not merged, into that judgment.

Paragraph 9(g) of the Agreement requires the parties "to exchange all information relevant or helpful to the recalculation of the Maryland Child Support Guidelines . . . so that the reallocation of alimony and child support . . . can be conducted." In May 2016, Michael provided Christa with his 2013 and 2014 income tax returns pursuant to Paragraph 9(g). His 2013 tax return indicated an income in excess of \$1,500,000, although Michael typically earned approximately \$250,000 to \$300,000 in the preceding years. According to Christa, Michael's employer permitted him to defer portions of his earned income, and Michael deferred much of his 2012 income until after the parties' divorce in 2013.

Upon realizing that Michael had deferred a significant portion of his income until after obtaining the Judgment of Absolute Divorce in March 2013, Christa filed a Motion to Enforce the Terms of the Marital Settlement Agreement, Rescind and Reopen the Marital Property Provision and to Award Damages and Attorney Fees. In her motion, Christa sought enforcement pursuant to Paragraph 23(b) of the Agreement which required complete voluntary financial disclosure. Paragraph 23(b) provides:

This Agreement is based upon voluntary financial disclosure by each party to the other. Each party warrants that his or her voluntary financial disclosure to the other has been full and complete and agrees that any substantial or material failure to disclose can be asserted by the other party as grounds for a rescission of the marital property portion of this Agreement.

Michael moved to dismiss Christa's motion, alleging *res judicata*, estoppel, laches and similar defenses.

On September 28, 2016, the circuit court held a hearing on Michael's motion to dismiss. During the hearing, the court construed Christa's motion to enforce as if it were a motion to revise judgment pursuant to Maryland Rule 2-535(b).¹ Based on this interpretation, the court found that Christa had alleged intrinsic, rather than extrinsic, fraud. Pursuant to *Hresko*, the court concluded, as a matter of law, that it could not revise the validly enrolled Judgment of Absolute Divorce pursuant to Rule 2-535(b) in the absence of extrinsic fraud. The court granted Michael's motion to dismiss, but gave Christa leave to amend her motion to enforce.

On October 13, 2016, Christa filed an amended motion, again seeking to enforce the Agreement by rescinding the marital property provisions of the Agreement. Michael moved to dismiss the amended motion to enforce, Christa filed a response, and on January 5, 2017, the circuit court held a hearing.

At the hearing, the circuit court again concluded that Christa's motion to enforce was in actuality a motion to revise under Rule 2-535(b). Relying on *Hresko*, it found that, despite her efforts to characterize the fraud as extrinsic, Christa only alleged intrinsic fraud.

¹ Maryland Rule 2-535(b) provides: "On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity."

The court dismissed with prejudice Christa's amended motion to enforce, and Christa timely appealed.

STANDARD OF REVIEW

We have explained the appropriate standard of review from the grant of a motion to dismiss as follows:

“The proper standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct. In reviewing the grant of a motion to dismiss, we must determine whether the complaint, on its face, discloses a legally sufficient cause of action.” In reviewing the complaint, we must “presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom.” “Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven.”

Higginbotham, 171 Md. App. at 264 (quoting *Britton*, 148 Md. App. at 425).

DISCUSSION

On appeal, Christa argues that the trial court incorrectly construed her motion to enforce as a motion to revise under Rule 2-535(b). We disagree. The specific enforcement provision relied upon here, coupled with the fact that the Agreement was incorporated into the Judgment of Absolute Divorce, effectively converted Christa's motion to enforce into a motion to revise under Rule 2-535(b). Because Christa's claim is based on alleged intrinsic rather than extrinsic fraud, the circuit court properly dismissed her motion with prejudice.

Incorporation of Agreement into Judgment of Divorce

We begin our analysis by explaining the significance of incorporating, but not merging, an agreement into a divorce judgment. The ability of a litigant to merge or

incorporate an agreement into a divorce decree is codified in Md. Code (1984, 2012 Repl. Vol.) § 8-105(a)(2) of the Family Law Article (“FL”). That section provides: “The court may enforce by power of contempt or as an independent contract not superseded by the divorce decree the provisions of a deed, agreement, or settlement that contain language that the deed, agreement, or settlement is incorporated but not merged into a divorce decree.”

Incorporation occurs,

when, and to the extent that, the court refers to or identifies the agreement, or the parts of it to be incorporated, and *either expressly states that it is to be incorporated into the judgment or otherwise makes clear that its provisions are to be regarded not merely as covenants of the parties but also as court directives*. Where there is only a partial incorporation, those parts of the agreement not incorporated retain their status as contractual provisions.

Ruppert v. Fish, 84 Md. App. 665, 673 (1990) (emphasis added) (footnote omitted).

Although an incorporated agreement becomes part of the court’s decree or judgment, an agreement that is incorporated but not merged into a judgment “survives as a separate and independent contractual arrangement between the parties.” *Johnston v. Johnston*, 297 Md. 48, 56 (1983). Even if incorporated into a judgment, a party may exercise rights agreed upon pursuant to general contract law. *Id.* at 58.

On appeal, Christa relies on *Fischbach v. Fischbach*, 187 Md. App. 61 (2009) to argue that a Maryland court may enforce the terms of a separation agreement without rescinding or reopening an enrolled judgment. We agree that, where enforcement of the relevant contractual provision does not attack the underlying judgment, a court may enforce such an agreement. *Fischbach*, however, is distinguishable from the case at bar.

In *Fischbach*, a husband and wife entered into a separation agreement which was incorporated, but not merged, into their judgment of absolute divorce. *Id.* at 69. That agreement provided, in relevant part, that:

Husband shall pay to wife a portion of the pension he receives from his employer . . . if, as, and when he receives the same in an amount calculated by multiplying 40% times a fraction, the numerator of which is the number of years the parties have been married during which he has been accruing pension rights and the denominator of which is the total number of years he accrues pension rights as of the date of his retirement, further multiplied by the total amount of the pension he will receive from the said employer.

Id. The judgment of divorce further “provided that the court would retain jurisdiction to amend the order issuing the judgment pursuant to subsequently filed Qualified Domestic Relations Orders (QDRO) relating to the parties[.]” *Id.*

Approximately eleven years after the enrollment of the judgment of absolute divorce, husband retired at the age of sixty-two and began receiving his pension benefits. *Id.* at 70. Wife did not learn of husband’s retirement until more than four years later when she submitted her first QDRO to the court because she incorrectly assumed husband would not retire until reaching the age of sixty-five. *Id.* Pursuant to the provision in the settlement agreement recited *supra*, wife filed a complaint in which she claimed entitlement to pension arrears accrued during the period between husband’s retirement and her first receipt of a payment pursuant to an approved QDRO. *Id.* Ultimately, the trial court entered judgment in wife’s favor for the amount of pension arrears requested. *Id.* at 73-74. On appeal, we affirmed the trial court’s decision, stating

The Separation Agreement bound [husband] to pay to [wife] a fixed percentage of his pension benefits “if, as, and when” he received such

benefits. The incorporation of the Separation Agreement into the Judgment of Absolute Divorce had the effect of adjudicating the liabilities of the parties thereafter maturing at stated periods. Thus, the proper procedure for seeking payment of pension arrearages was the filing of a proper petition and the issuance of an order enforcing the divorce decree by execution or attachment as to all unpaid installments.

Id. at 84 (internal citations and quotation marks omitted). Notably, the wife in *Fischbach* sought to enforce the plain terms of the judgment of divorce; she made no attempt to rescind or revise any portion of the judgment.

Throughout this case, Christa has insisted that she may enforce Paragraph 23(b) of the Agreement in the underlying divorce action. At the hearing on the first motion to dismiss, Christa's trial counsel stated,

The contractual duty, as set forth in the agreement in 23(b), says they've made the disclosures and each party warrants that his or her voluntary financial disclosure has been full and complete and agrees that if any substantial or material failure disclosed can be asserted by the other party as a ground for *rescission* [of the] marital property portion of the agreement. That's the contractual clause under consideration, that's what was pled in the motion.

(Emphasis added). At the hearing on the second motion to dismiss, Christa's counsel again stated that, "In terms of the contractual obligation I think that is clear in the sense that it calls for compliance and if there is no compliance then there is a remedy, which is *revisiting the marital property issue*." (Emphasis added). On appeal, Christa maintains that the trial court could have enforced Paragraph 23(b) of the Agreement in the same way that the trial court in *Fischbach* ordered the payment of pension arrears. In her brief, she argues,

While the husband in *Fischbach* raised other defenses, it is apparent from that case that the concealment by [Michael] of his enormous bonus earned in 2012 is actionable in [Christa's] Motion to Enforce. *The point is*

that where an award of such monies is sought through enforcement of a marital settlement agreement, the moving party is not seeking to reopen an enrolled judgment, and thus the intrinsic/extrinsic fraud analysis does not apply.

(Emphasis added).

Christa's reliance on *Fischbach* is misplaced. Unlike *Fischbach* where the wife simply requested the establishment of pension arrears pursuant to a specific formula contained in the separation agreement, throughout these proceedings Christa consistently sought to rescind and reopen, rather than enforce, the marital property portion of the Agreement. The distinction between *Fischbach* and the present case is obvious. Accordingly, we see nothing in *Fischbach* to support the proposition that a court may use a contractual provision to rescind or attack its own judgment.²

The unique nature of "marital property" in Maryland law further bolsters our conclusion that Christa seeks to revise an enrolled judgment rather than merely enforce a contract.³ In *Falise v. Falise*, we described the nature and context of "marital property":

² Nothing in our opinion should be construed as precluding Christa from independently pursuing tort, breach of contract and/or breach of warranty claims arising from the execution of the Agreement. Although Christa, in her amended motion, sought "damages in an amount to be determined between \$500,000 and \$750,000," the circuit court was not wrong to interpret that demand as so intertwined with her claim to reopen and rescind the Agreement as to run afoul of *Hresko*.

³ Although Paragraph 23(b) of the Agreement states that a failure to disclose financial assets may be grounds for "rescission of the marital property portion of this Agreement[.]" we note that there is no "marital property portion" in this Agreement. The Agreement has separately titled sections for "Alimony," "Child Support," and various items of real and personal property, but there is no section titled "Marital Property" or "Monetary Award."

Marital property is merely a term created by the legislature to describe the status of property acquired during the marriage, however titled (as defined in Md. Family Law Code Ann. § 8-201(e) (1984)), title to which may have given rise to a potential inequity, upon dissolution of the marriage. That inequity, conceptually, may be corrected via a different legislative creature called the “monetary award.” *Thus, the only function of “marital property” is to form a base for a “monetary award.”*

63 Md. App. 574, 580 (1985) (emphasis added).⁴ Here, the trial court did not issue a monetary award pursuant to FL § 8-205 in the Judgment of Absolute Divorce. If Christa were successful in rescinding the marital property portion of the Agreement, the trial court would necessarily have to receive evidence related to the existence and valuation of marital property and determine whether a monetary award is appropriate.⁵ Because the Judgment of Absolute Divorce contained no monetary award, Christa’s legal theory implicitly requires revision of the Judgment. And because Christa seeks revision of an enrolled judgment, the only appropriate vehicle for relief is pursuant to Maryland Rule 2-535(b). That rule provides: “On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.” Having established that Christa’s motion to enforce is functionally equivalent to a motion

⁴ We note that, in an independent breach of contract or warranty action, interpretation of the phrase “marital property” may not be limited to the term of art defined in FL § 8-201(e) and as described in *Falise*. In the event the phrase “marital property” were deemed ambiguous by application of contract law, the proper interpretation of that phrase is best left for determination in a future proceeding, if any, to resolve any ambiguity.

⁵ Indeed, we express doubt whether the court has the authority to modify the marital property portion of the Agreement. FL § 8-103 permits a court to modify a settlement agreement in narrow circumstances, none of which include division of marital property or a monetary award.

to revise, we turn to *Hresko*, which provides useful guidance regarding what type of fraud must be present for a court to revise an enrolled judgment under the Rule.

***Hresko* and Fraud**

In *Hresko*, a husband and wife entered into a voluntary separation agreement which was incorporated but not merged into the parties' divorce order. 83 Md. App. at 230. Pursuant to their settlement agreement, wife reserved the right to buy husband's interest in the family home. *Id.* Following their divorce, wife exercised her option and paid husband \$30,000 in cash for his interest in the family home. *Id.* Surprised that wife had purchased his interest with cash, husband concluded that wife had hidden some of her monetary assets and that she had defrauded him during property settlement negotiations. *Id.* Husband filed a Motion to Revise Judgment and to Rescind Separation and Property Settlement Agreement, and wife moved to dismiss. *Id.* Following a hearing, the court granted wife's motion to dismiss. *Id.* at 230-31.

On appeal, this Court noted that, "In an action to set aside an enrolled judgment or decree, the moving party must initially produce evidence sufficient to show that the judgment in question was the product of fraud, mistake or irregularity." *Id.* (citing *Fleisher v. Fleisher*, 60 Md. App. 565, 570 (1984)). Regarding fraud, we explained that "the type of fraud which is required to authorize the reopening of an enrolled judgment is extrinsic fraud and not fraud which is intrinsic to the trial itself." *Id.* (citing *Schneider v. Schneider*, 35 Md. App. 230, 238 (1977)). We defined intrinsic fraud as fraud related to issues regarding the original action, or issues that were or could have been actually litigated. *Id.*

at 232. In contrast, we described extrinsic fraud as fraud that “actually prevents an adversarial trial[,]” the type of fraud that prevents “the actual dispute from being submitted to the fact finder at all.” *Id.*

We recognized a split of authority regarding whether to treat the concealment of assets as intrinsic or extrinsic fraud, but ultimately concluded that such actions constitute intrinsic fraud. *Id.* at 233-35. Accordingly, we held that the trial court correctly dismissed husband’s motion to revise and rescind his settlement agreement because the fraud alleged was not extrinsic to the trial itself. *Id.* at 236.

Christa’s allegation that Michael concealed his deferred income mirrors the husband’s claim in *Hresko* that the wife concealed \$30,000 in assets during settlement negotiations. Both claims are based on alleged “[m]isrepresentations or concealment of assets made in negotiations leading to [a separation agreement] later incorporated into a divorce decree.” *Id.* at 235. The husband in *Hresko*—and Christa in the instant case—both sought rescission of the separation agreement due to fraud. Accordingly, in our view, *Hresko* controls and the circuit court here properly dismissed Christa’s motion because her claims of intrinsic fraud do not warrant reopening an enrolled judgment. In our view, Judge Alpert’s conclusion in *Hresko* is equally apt here:

To rule otherwise would be to subject every enrolled divorce decree that includes a property settlement to revision upon discovery of alleged fraud in the inducement of the settlement. Public policy of this state demands an end to litigation once the parties have had an opportunity to present in court a matter for determination, the decision has been rendered, and the litigants afforded every opportunity for review.

Id. at 236.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**