

COURT OF APPEALS OF MARYLAND

Robert M. Ricketts, Jr. v. Mary C. Ricketts, 393 Md. 479

903 A.2d 857 (2006) · No. No. 136, September Term, 2003 · Decided July 28, 2006

SUMMARY

The Court of Appeals of Maryland held that a complaint for a limited divorce based on constructive desertion may proceed even when spouses continue to live under the same roof, provided the allegations otherwise state a claim. The court also held that a court may determine custody, visitation, and support notwithstanding the parents' continued co-residence. The judgment dismissing the complaint was reversed.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Bell, C.J.; Raker, J.; Wilner, J.; Cathell, J.; Harrell, J.; Battaglia, J.; Greene, J.
JURISDICTION	Maryland
DECIDED	July 28, 2006
DOCKET	No. 136, September Term, 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from dismissal of a complaint seeking a limited divorce based on constructive desertion, custody, and visitation where the spouses continued to reside under the same roof.
STANDARD OF REVIEW	De novo review of the grant of a motion to dismiss for failure to state a claim; the reviewing court examines the legal sufficiency of the pleadings, assumes the truth of all well-pleaded material facts and reasonable inferences, and views them in the light most favorable to the nonmoving party.
PRECEDENTIAL VALUE	Published, precedential opinion of the Court of Appeals of Maryland
PARTIES	Robert M. Ricketts, Jr. v. Mary C. Ricketts

TOPICS

- family law procedure
- divorce
- child custody
- visitation
- statutory interpretation

PRACTICE AREAS

family law

divorce

child custody

appellate procedure

QUESTIONS PRESENTED

1. Whether a complaint for limited divorce alleging constructive desertion based on denial of marital relations may proceed when the spouses continue to live under the same roof but do not cohabit as husband and wife.
2. Whether a complaint seeking custody and visitation may proceed when the parents continue to live under the same roof.

HOLDINGS

1. A complaint for a limited divorce based on constructive desertion may be maintained when the spouses continue to live under the same roof, provided the pleaded facts, if proven, establish cessation of the marital relationship and the other elements of constructive desertion.
2. A Maryland equity court has jurisdiction and power to determine custody, visitation, and support even when the parents continue to live under the same roof and regardless of whether a limited divorce is granted.

KEY QUOTATIONS

“It is beyond question that there may be a desertion although the husband and wife continue to live under the same roof. For desertion, as applied to husband and wife, signifies something more than merely ceasing to live together. It means ceasing to live together as husband and wife.” (863)

“The trial court, in short, whether, or not, it concludes that Mr. Ricketts is entitled to a divorce, has the jurisdiction and power to determine the custody, visitation, and support of the Ricketts' children.” (870)

FACTUAL BACKGROUND

The parties were married in 1981 and had three children, two of whom were minors when the complaint was filed. Robert alleged that Mary forced him from the marital bedroom and denied him marital relations, although the parties continued to live in the same house in separate bedrooms. He filed for a limited divorce on constructive-desertion grounds and sought custody and visitation of the minor children.

PROCEDURAL HISTORY

Robert Ricketts filed a complaint for limited divorce and custody of the parties' minor children, alleging that Mary Ricketts had denied him marital relations and forced him from the marital bedroom. The Circuit Court for Carroll County granted Mary's motion to dismiss, reasoning that the parties had not separated or lived apart. Robert appealed to the Court of Special Appeals, and the Court of Appeals of Maryland issued its own writ of certiorari before proceedings in that court.

DISPOSITION

REMAND INSTRUCTIONS

The Circuit Court for Carroll County must conduct further proceedings consistent with the opinion, including consideration of the claims for limited divorce, custody, visitation, and support rather than dismissing the complaint on the pleadings.

CASES CITED

- Ricketts v. Ricketts, 380 Md. 230, 844 A.2d 427 (2004)
- Courson v. Courson, 213 Md. 183, 129 A.2d 917 (1957)
- Thomas v. Thomas, 294 Md. 605, 451 A.2d 1215 (1982)
- Crise v. Smith, 150 Md. 322, 133 A. 110 (1926)
- Walker v. Walker, 209 Md. 428, 121 A.2d 195 (1956)
- Scheinin v. Scheinin, 200 Md. 282, 89 A.2d 609 (1952)
- Mower v. Mower, 209 Md. 413, 121 A.2d 185 (1956)
- Kelsey v. Kelsey, 186 Md. 324, 46 A.2d 627 (1946)
- Whitehurst v. Whitehurst, 257 Md. 685, 264 A.2d 822 (1970)
- Davey v. Davey, 202 Md. 428, 96 A.2d 606 (1953)
- Afamefune ex rel. Afamefune v. Suburban Hosp., Inc., 385 Md. 677, 870 A.2d 592 (2005)
- Converge Services Group, LLC v. Curran, 383 Md. 462, 860 A.2d 871 (2004)
- Porterfield v. Mascari II, Inc., 374 Md. 402, 823 A.2d 590 (2003)
- Benson v. State, 389 Md. 615, 887 A.2d 525 (2005)
- Allied Invest. Corp. v. Jasen, 354 Md. 547, 731 A.2d 957 (1999)
- Moran v. Moran, 219 Md. 399, 149 A.2d 399 (1959)
- Koger v. Koger, 217 Md. 372, 142 A.2d 599 (1958)
- Barnard v. Godfrey, 157 Md. 264, 145 A. 614 (1929)
- Adventist Health Care Inc. v. Maryland Health Care Comm'n, 392 Md. 103, 896 A.2d 320 (2006)
- Deville v. State, 383 Md. 217, 858 A.2d 484 (2004)
- Navarro-Monzo v. Washington Adventist, 380 Md. 195, 844 A.2d 406 (2004)
- Waddell v. Kirkpatrick, 331 Md. 52, 626 A.2d 353 (1993)
- Stancill v. Stancill, 286 Md. 530, 408 A.2d 1030 (1979)