

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0720

September Term, 2014

ZOA WILSON

v.

STEVEN MARZO

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: June 4, 2015

*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 October 6, 2011, appellant Zoa Wilson moved to set aside an enrolled judgment of absolute divorce, which was entered over four years earlier, on February 6, 2007. The Circuit Court for Baltimore County denied the motion, finding, among other things, that she had failed to exercise ordinary diligence in pursuing her request for relief from the judgment.

QUESTIONS PRESENTED

Wilson's brief contains the following questions:

1. Did the lower court [err] in denying the Appellant's Motion to Revise the Judgment of Divorce as defined by Md. Family Law Code § 8-201, when [it] interpreted the fraudulent actions exhibited in procuring the Judgment as intrinsic, rather than extrinsic fraud, which violated the Appellant's due process rights guaranteed to her under the Maryland Constitution and the Fourteenth Amendment of the United States of America?
2. Did the lower court abuse its discretion by ignoring the procedural irregularities that [led] the court to grant the Judgment of Divorce as defined by Md. Family Law Code Ann. § 8-201, which violated the Appellant's due process of law guaranteed to her under the Maryland Constitution and the Fourteenth Amendment of the United States of America?
3. Did the lower court abuse its discretion when it determined the Appellant did not act with ordinary due diligence and good faith in proceeding to set aside the Judgment of Divorce?

It is necessary here to answer only the final question. The court did not abuse its discretion when it determined that Wilson failed to act with ordinary diligence in the years before she filed her motion. Because we must affirm the circuit court's order on those grounds, we need not address the issues of fraud or irregularity.

BACKGROUND

Zoa Wilson and Steven Marzo were married in 1995. This case commenced in 2006, when Wilson filed a complaint for limited divorce in the Circuit Court for Baltimore County. The parties signed a voluntary separation and property settlement agreement, in which Wilson agreed not to seek alimony or a marital award in exchange for a payment of \$205,000, and in which she acknowledged that \$153,000 of that total had already been received.

Marzo counterclaimed, seeking absolute divorce on the grounds of a one-year separation and alleging that the parties had agreed to settle all marital property issues. An answer signed by Wilson admitted to all allegations of the counterclaim.

On February 6, 2007, the circuit court entered a judgment of absolute divorce. The settlement agreement was incorporated, but not merged, into the judgment.

Over four and a half years later, on October 6, 2011, Zoa Wilson filed a *pro se* “Motion to Revise Final Divorce Judgment.” Pursuant to Md. Rule 2-535(b), she moved to vacate the divorce action and the incorporated settlement agreement. Wilson contended that the judgment had been procured by fraud. She alleged that Marzo had “[b]y means of extortion . . . coerced [her] not to contest the divorce case” and “misled the Court into granting him a divorce based on deceitful grounds.”

The crux of Wilson’s allegations was that, during the divorce action, Marzo had exploited Wilson’s weakened physical condition and his exclusive control of the parties’

finances, in order to pressure her into agreeing to the settlement. Wilson asserted that Marzo had offered to advance sums for the cost of surgery that she needed to treat the effects of her autoimmune disorder, provided that she agree to fire her divorce attorney, to refrain from appearing to contest the divorce, and to sign the settlement agreement.¹ Wilson admitted that she signed the agreement, and yet she characterized it as “a fictitious agreement indicating the divorce was amicable, voluntary, and on mutual terms.”

In Marzo’s response to the 2011 motion, he denied Wilson’s allegations of fraud. He further contended that the allegations, even if true, did not constitute extrinsic fraud or other grounds for revising the judgment. Finally, he argued that Wilson had not acted with diligence because she waited several years before seeking relief from the judgment.

Wilson later secured counsel and filed an amended motion, which restated her allegations of “duress” and “extrinsic fraud.” Wilson’s attorney then successfully moved to disqualify Marzo’s counsel, Mr. Stephen Prevas, on the grounds that Prevas had formerly represented Wilson in a 2001 bankruptcy case.²

The circuit court held a motions hearing on May 20, 2014. Wilson, through her newly-retained counsel, now argued that an “irregularity” justified setting aside the judgment. Wilson argued that she had been deprived of the opportunity to file an answer to

¹ The settlement instrument itself, which purports to contain the entire integrated agreement between the parties, did not include any stipulation that Wilson decline representation or refrain from appearing in court.

² Despite the conflict of interest that had neither been disclosed to the court nor waived by Wilson, Prevas had also represented Marzo during the divorce proceeding.

Marzo's counterclaim in the divorce. Wilson had been served with the counterclaim by mail on November 17, 2006, but the court rendered judgment after taking testimony and receiving the settlement into the record at a conference on December 6, 2006. Wilson's answer was filed two days later, on December 8, 2006.

Wilson also raised new allegations about the circumstances under which that answer was filed. She testified that, after Marzo and his attorney Prevas persuaded her to fire her own divorce attorney, Prevas then convinced her that Prevas would represent both parties in the divorce action in order to reduce the cost of the divorce.³ Wilson testified that, acting under the belief that Prevas was representing her at the conference on December 6, 2006, she followed his instructions to sign and post-date a blank form. She further testified that the form and an accompanying certificate of service had been filled out in another person's handwriting and then filed as an answer without her knowledge. Wilson denied ever filing an answer, instead testifying that she only discovered the completed filing with her signature on it years later.

During Wilson's testimony, the court asked her to explain what actions she had taken to seek relief in the five years after the judgment. Wilson testified that she was not

³ The record includes a copy of a letter sent by Wilson to terminate the services of her divorce attorney. The letter stated that "Prevas, Mr. Marzo's attorney, has agreed to handle further dealings with the Circuit Court for Baltimore County that would concern either me or Mr. Marzo regarding the divorce." The bottom of the letter states: "CC: Steven Prevas." Wilson testified that she sent a copy of the letter to Prevas.

successful in securing representation because she was impoverished and disabled. After her health improved, she eventually took steps to educate herself and to proceed *pro se*.

Marzo, who was no longer represented by counsel, also testified at the hearing. He denied any misconduct on his part and claimed that he had made the settlement payments in full. Neither Prevas nor any other witnesses testified at the hearing.

The circuit court entered an order denying Wilson’s motion on May 27, 2014. In a memorandum opinion, the court stressed that Wilson had waited several years from the date of judgment before filing her motion. The court explained: “She presumably received the judgment in the mail which clearly incorporated the separation agreement she had signed and did nothing in court for four and a half years.” The court reasoned that, in any event, the testimony concerning the settlement agreement did not provide grounds for vacating the judgment: “No matter how this Court addresses the facts and circumstances of this case, this Court is not ultimately persuaded that there has occurred extrinsic fraud, mistake, or irregularity . . . which would require the Court’s exercise of its extraordinary power in . . . striking this judgment.”⁴

Wilson noted a timely appeal. Marzo has declined to file an appellee’s brief.

⁴ The court also reasoned that the real remedy sought by Wilson was to rescind the settlement agreement. The court concluded that it could not set aside the contract, because Wilson’s testimony indicated that she had ratified the agreement when she accepted payments under the settlement.

DISCUSSION

After the expiration of the 30-day period following the entry of a judgment, “the court has revisory power and control over the judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk’s office to perform a duty required by statute or rule.” Md. Code (1973, 2013 Repl. Vol.), § 6-408 of the Courts and Judicial Proceedings Article. “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.” Md. Rule 2-535(b).

As used in this Rule, “[t]he terms ‘fraud, mistake, or irregularity’ . . . are narrowly defined and are to be strictly applied.” *Early v. Early*, 338 Md. 639, 652 (1995) (citation omitted). The movant bears the burden of demonstrating the alleged fraud, mistake, or irregularity by clear and convincing evidence. *Powell v. Breslin*, 430 Md. 52, 70 (2013) (citing *Tandra S. v. Tyrone W.*, 336 Md. 303, 314 (1994)). “The overarching aim of Md. Rule 2-535(b) . . . is the preservation of the finality of judgments, unless specific conditions are met.” *Powell*, 430 Md. at 71.

This Court reviews the denial of a motion to vacate an enrolled judgment under the abuse of discretion standard. *Bland v. Hammond*, 177 Md. App. 340, 346 (2007). We will reverse the denial of a motion to revise a final judgment only where no reasonable person would take the view adopted by the trial court or where the court has acted without reference to any guiding rules or principles. *Id.* at 346-47 (quoting *Das v. Das*, 133 Md. App. 1, 15

(2000)). This standard “makes generous allowances for the trial court’s reasoning” (*Das*, 133 Md. App. at 15), and the court’s judgment “will be reversed only if there is a grave reason for doing so.” *Id.* at 16 (citations and quotation marks omitted).

A circuit court’s discretionary decision about whether to grant relief from an enrolled judgment is fundamentally an equitable determination. *See Tyrone W. v. Danielle R.*, 129 Md. App. 260, 281 (1999), *aff’d sub nom. Langston v. Riffe*, 359 Md. 396 (2000). For this reason, a party who seeks to set aside an enrolled judgment must show that the party has acted with ordinarily diligence, in good faith, and has a meritorious position. *See Estime v. King*, 196 Md. App. 296, 307 (2010) (citing *Chapman v. Kamara*, 356 Md. 426, 448 (1999)).

Whether a party acted with diligence to pursue relief is a factual determination that requires the trial court to weigh the various facts and circumstances. *Estime*, 196 Md. App. at 308 (citing *Gruss v. Gruss*, 123 Md. App. 311, 321 (1998)). A long lapse of time between a judgment and a motion to revise that judgment, while not determinative in itself, is a significant factor in the court’s determination. *See Estime*, 196 Md. App. at 308. In particular, a delay of several years before the filing of a motion weakens a party’s assertion that it acted with the requisite diligence. *See Gruss*, 123 Md. App. at 320-21.

Attorneys and *pro se* litigants alike have a responsibility to monitor the dockets in their case and to act expeditiously in asserting their rights. *See Estime*, 196 Md. App. at 304; *see also Dir. of Fin. of Baltimore City v. Harris*, 90 Md. App. 506, 514-15 (1992) (holding that court improperly struck enrolled default judgment where *pro se* party failed to offer

satisfactory explanation for waiting five months to move to strike judgment). “Ordinary diligence includes moving to vacate a judgment ‘as soon as’ a party learns of the judgment and investigates the facts.” *Bland*, 177 Md. App. at 357 (quoting *Fleisher v. Fleisher Co.*, 60 Md. App. 565, 573 (1984)).

For instance, in *Bland*, 177 Md. App. at 357-59, we held that a trial court did not abuse its discretion in denying a motion to vacate an enrolled judgment, where the movant had not sought to vacate the judgment until nearly three years from the date her action was dismissed and until nearly fourteen months after she learned of the dismissal. Even though the movant attempted to explain the delay by pointing to the misconduct of her attorney, we agreed with the trial court that her actions did not “rise to the level of ordinary diligence, nor did she satisfy her duty to keep herself informed of the status of her case.” *Id.* at 358-59.

In the instant matter, Wilson’s October 6, 2011, motion to vacate the divorce judgment relied primarily on factual allegations that were known to her as of December 6, 2006, at the latest. Wilson admits that she was aware of the settlement agreement and aware that the final judgment of divorce had been entered on February 7, 2007. To explain the multi-year delay in seeking relief from the judgment, Wilson provided the court only with a general account of her health problems and her difficulties in retaining counsel. Those factors, while they may have been relevant, needed to be weighed against the fact that an extraordinary period of delay preceded the motion.

Under these circumstances, the circuit court did not act unreasonably or otherwise abuse its discretion when it determined that Wilson failed to act with ordinary diligence in pursuing this remedy. Because we affirm the court's order on these grounds, we decline to reach any of the additional issues raised in this appeal.

**ORDER OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**