

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1072

September Term, 2014

L. B. WALKER A/K/A
LEBON BRUCE WALKER

v.

ELLIOT N. LEWIS, TRUSTEE

Kehoe,
Leahy,
Raker, Irma S.,
(Retired, Specially Assigned),
JJ.

Opinion by Kehoe, J.

Filed: February 16, 2016

*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.

L. B. Walker appeals from a money judgment of the Circuit Court for Baltimore City, the Hon. W. Michel Pierson, presiding, in favor of Elliot N. Lewis, Trustee of the Elliot N. Lewis, P.A. Profit Sharing Plan. Mr. Lewis has moved to dismiss Mr. Walker's appeal. We will deny the motion but, as we will explain, the timing of the notice of appeal has foreclosed several of the contentions raised by Mr. Walker.

Background

This appeal arises out of an action filed by Lewis, in his capacity as trustee for his profit-sharing plan, against Walker to collect money that Walker allegedly owed to Lewis's plan.¹ The procedural background is a bit tangled but for our purposes, the following summary is sufficient:

Lewis, who is a practicing lawyer in Maryland, filed the action on March 18, 2009. He was unable to effect service on Walker. He filed a motion to permit service by alternate means. *See* Md. Rule 2-121(c). The circuit court granted the motion on May 9, 2012. The court's order required Lewis to mail copies of the summons and complaint, together with all other suit papers to Walker at 5305 59th Avenue, Riverdale, Maryland, 20737. These documents were to be sent by certified mail-restricted delivery and by first class mail, postage prepaid. Additionally, the order required Lewis to post the Riverdale property. On June 15, 2012, Lewis filed a return of service indicating that he accomplished these actions on June 3, 2012. Walker did not file an answer or other

¹There were other defendants in the action but Lewis dismissed his claims against them prior to the entry of judgment against Walker.

responsive pleading.

On July 5, 2012, Lewis moved for an order of default. Walker thereupon filed an opposition to the motion for a default order asserting, correctly, that Lewis's proof of service failed to contain all of the information required by Md. Rule 2-126. Walker asserted that he knew about these deficiencies because he had personally inspected the court's file. In the signature block of this paper, Walker indicated that his mailing address was 301 East 25th Street, Baltimore, Maryland.

The circuit court denied Lewis's motion for a default order without prejudice. Lewis filed additional motions for an order of default which the court continued to deny until, eventually, Lewis filed a proof of service that conformed to the Maryland Rules. Once that occurred, Lewis filed another request for an order of default on August 17, 2012. The circuit court granted the motion on September 4, 2012. The court's order indicated that it concluded that Lewis had complied with the order permitting alternative service of process and that Walker had actual knowledge of this action "based upon his papers filed on July 13, 2012."²

Lewis requested a hearing on damages and, on January 22, 2013, a notice of

²Walker claims that he mailed a motion to vacate the order of default to to the Clerk's Office on October 5, 2012. He included a copy of motion in his record extract.

The problem with this is that the docket entries do not indicate this motion was filed and his motion is not part of the record. We will not consider the motion, other than to note that (1) there is no date stamp or other notation on the motion suggesting that it was received by the Clerk Office; and (2) in the motion, Walker did not present any defense to the merits of Lewis's complaint.

hearing was sent by the circuit court to Walker at his 301 East 25th Street address. Walker did not respond. After a hearing, the circuit court entered judgment against Walker in the amount of \$339,284.40. The judgment was filed on March 4, 2013.

On June 4, 2013, Walker filed a motion to vacate the judgment together with a motion to dismiss the complaint and the judgment against him. (These motions seek essentially the same relief and we will refer to them as “the motions to vacate.”) Collectively, these motions asserted that: (1) the circuit court did not have personal jurisdiction over Walker because he had never been properly served with process; and (2) the action should be dismissed because the plaintiff in the action was a trust and that, because he was trustee, Lewis could not appear in court on the trust’s behalf. Lewis filed a motion to “quash” these motions. On June 13, 2014 the circuit court denied Walker’s motions and ordered them stricken from the record. The court’s order stated in pertinent part:

The court’s review of the record reflects that the terms of [the order permitting alternative service of process] were complied with by [Lewis], as there are affidavits attesting to the performance of the acts required by the order. Furthermore, the fact that the signature on the return receipt is not defendant’s, if true, does not establish “fraud” sufficient to set aside a judgment. [Additionally,] [Walker] presents no basis for a conclusion that [Lewis] may not maintain this action as trustee of the profit sharing plan.

On June 20, 2014, Walker filed a motion for reconsideration of the June 13 order, which was denied on July 21, 2014. Walker filed a notice of appeal on July 31, 2014.

Analysis

In his brief, Walker argues that the judgment against him should be vacated for two reasons: (1) the circuit court never obtained personal jurisdiction over him; and (2) because Lewis was the trustee of profit-sharing plan, he could not represent the plan in this action.

In addition to addressing these contentions on the merits, Lewis has moved to dismiss the appeal as untimely filed. The critical dates in deciding the motion to dismiss are:

March 4, 2013:	Entry of final judgment filed;
June 4, 2013:	Walker's motions to vacate filed;
June 13, 2014:	Circuit court denies Walker's motions to vacate;
June 20, 2014:	Walker's motion for reconsideration filed;
July 21, 2014:	Court denies motion for reconsideration; and
July 31, 2014:	Notice of appeal filed.

A notice of appeal must be filed within thirty days of the entry of final judgment. Md. Rule 8-202(a). Walker, obviously, failed to do this. Lewis is correct that Walker does not have the right to challenge the merits of the judgment.

As we will now explain, Walker does, however, have the right to challenge the court's order of June 13, 2014. Walker filed his motion for reconsideration within ten days of the circuit court's denial of that motion, and his notice of appeal within thirty days after the motion for reconsideration was denied. Accordingly, his appeal is timely but

only as to whether the circuit court erred when it denied his motions to vacate the judgment. We turn to that issue.

We conclude, as did the circuit court, that Walker’s motions to vacate were, in effect, motions to revise the judgment pursuant to Md. Rule 2-535(b). Rule 2-535(b) authorizes the circuit court to exercise revisory power over a judgment based upon fraud, mistake or irregularity. The authority to revise extends to the authority to vacate. We will reverse a circuit court’s decision to grant or deny a Rule 2-535(b) motion only if we are convinced that the court’s decision was an abuse of discretion. *In Re Adoption No. 93321055*, 344 Md. 458, 475 (1997). A court abuses its discretion when it renders a decision that is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *North v North*, 102 Md. App. 1, 14 (1994).

We hold that the circuit court did not abuse its discretion. In order to prevail on a motion to vacate a judgment pursuant to Md. Rule 2-535(b), a movant must demonstrate either fraud, mistake or irregularity *and* a meritorious defense to the action. *See, e.g., Owl Club v. Gotham Hotel*, 270 Md. 94, 100 (1973). We can discern no suggestion of fraud, mistake or irregularity in the record. Moreover, Walker has never suggested that he has any defense whatsoever to the merits of Lewis’s collection claim.

In *Smith-Myers Corp. v. Sherill*, 209 Md. App. 494, 523 (2013), we noted that the default judgment procedure is a ““a means of relief against the delay and neglect of

defendants.” (quoting *Glass v. Glass*, 284 Md. 169, 172 (1978)). Walker knew, or should have known, that the circuit court had jurisdiction over him on September 4, 2012, when the court granted Lewis’s motion for an order of default because in that order the court concluded that Lewis had complied with the order permitting alternative service of process. Even after that order, Walker made no effort to set out any defense to the merits of Lewis’s claim.

What we said in *Smith-Meyers* rings equally true here:

This case presents a clear picture of sustained, systematic and inexcusable neglect on the part of [Walker] with consequent delay and prejudice to [Lewis] and disruption to the orderly administration of justice in the circuit court.

209 Md. App. at 523.

**THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY IS
AFFIRMED. APPELLANT TO PAY COSTS.**