

Circuit Court for Baltimore County
Case No. 03-C-15-005224

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1595

September Term, 2016

YONG RAN SUNWOO KIM

v.

CHANG JIN SUNWOO

Eyler, Deborah S.,
Friedman,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: January 3, 2018

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Yong Ran Sunwoo Kim, the appellant, challenges an order of the Circuit Court for Baltimore County granting a motion to revise judgment filed by Chang Jin Sunwoo, the appellee. In granting the motion, the court vacated a provision of the parties' judgment of absolute divorce concerning a tract of land Ms. Kim owns in South Korea. Ms. Kim poses one question for review, which we have rephrased:

Did the trial court err by revising the divorce judgment based on a motion filed more than thirty days after the judgment was entered?

For the following reasons, we shall reverse in part the order of the circuit court.

FACTS AND PROCEEDINGS

The parties were married in Seoul, South Korea on May 8, 1982. Early in their marriage, they separated for a period of five years and divided their assets. During that separation, Ms. Kim purchased the South Korean land at issue in this appeal (“the Property”).¹ The parties subsequently reconciled and moved to the United States. At the time of the instant proceedings, they were permanent residents living in Catonsville.

In May 2015, Ms. Kim filed a complaint for absolute divorce. Mr. Sunwoo filed an answer and a counter-complaint for absolute divorce. In his counter-complaint, Mr. Sunwoo alleged that the parties had “jointly acquired” certain property during their marriage, including the Property. Among other things, he asked the court to identify and value all marital property and grant him a monetary award.

¹ Mr. Sunwoo purchased real property that he later sold.

A merits hearing was held for three days in February and March 2016. The parties agreed that the Property was titled in Ms. Kim’s name. Mr. Sunwoo asserted that the Property was marital property valued at \$500,000. Ms. Kim asserted that the Property was non-marital property valued at \$40,000. Neither party presented any evidence, other than their own assertions, to support his or her valuation of the Property.

On April 1, 2016, the court entered a memorandum opinion and judgment of absolute divorce. It found that the “circumstances surrounding [Ms. Kim’s] acquisition of the [P]roperty . . . [were] sufficient to establish that the parties intended the [P]roperty to be excluded from their marital property”; therefore, the Property was “not marital property and belong[ed] solely to [Ms. Kim].” In the divorce judgment, the court stated, regarding the Property:

ORDERED, that the unimproved land located in South Korea titled in [Ms. Kim]’s name alone shall remain her sole and separate property without any claim from [Mr. Sunwoo].

The court otherwise ordered certain jointly titled marital property located in Maryland sold, with the proceeds to be divided equally; denied Mr. Sunwoo’s request for alimony; and ordered that both parties would be responsible for their own attorneys’ fees. The court did not grant a monetary award.² No appeal was noted.

² On April 29, 2016, within thirty days of the entry of the divorce judgment, Ms. Kim filed a motion for reconsideration, which she supplemented on June 8, 2016. The motion did not seek any relief pertaining to the Property, although Ms. Kim mentioned that Mr. Sunwoo had “initiated further action against [her] in Korea regarding the [Property].” Her motion was denied by order entered June 29, 2016.

On July 19, 2016, more than three months after entry of the divorce judgment, Ms. Kim filed a motion for specific performance. She alleged that Mr. Sunwoo had taken “action in Korean courts” (“South Korea lawsuit”) seeking to be awarded “a portion of [the value of] the [Property].” She further alleged that she had asked him to sign a release dismissing the South Korea lawsuit, but he had refused. She asked the court to order Mr. Sunwoo to sign the release.

Mr. Sunwoo moved to dismiss Ms. Kim’s motion for specific performance and also moved to revise the divorce judgment to vacate the provision quoted above. He asserted that the court had jurisdiction to identify and value the parties’ marital property and to make an equitable distribution, but not to “interfer[e] with South Korea’s jurisdiction to hear the [South Korea lawsuit] and its right to determine the ownership and disposition of land that is contained within its borders.” As Mr. Sunwoo put it, the circuit court had not had “jurisdiction to issue an Order that assign[ed] property rights as to South Korean land.”

Ms. Kim filed an opposition to the motion to dismiss and to revise. As pertinent, she explained that under Rule 2-535(b), the court only would have authority to revise the divorce judgment in the event of “fraud, mistake, or irregularity.” She maintained that the court plainly had jurisdiction to decide whether the Property was marital or non-marital, and hence whether the Property’s value would be included in making an equitable distribution of marital property. The court’s finding that the Property was non-marital did not affect the title to the Property but merely resulted in Mr. Sunwoo’s not

being able to include its value in arguing for a monetary award. Ms. Kim argued that permitting Mr. Sunwoo to seek a share of the value of the Property in the South Korea lawsuit would be “tantamount to a monetary award,” rendering meaningless the court’s determination that the Property was non-marital.

On September 15, 2016, the court entered an order denying Ms. Kim’s motion for specific performance, granting Mr. Sunwoo’s motion to revise, and vacating in its entirety the provision of the divorce judgment pertaining to the Property.

This timely appeal followed.

DISCUSSION

Rule 2-535(a) provides that, “[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over [a] judgment[.]” After the thirty-day window has closed, the judgment is enrolled and the court only may revise it “in case of fraud, mistake, or irregularity.” Md. Rule 2-535(b). “The purpose of the rule is to ensure the finality of judgments . . . [and] Maryland cases are legion that recognize the principle that there must be a definite and foreseeable end to litigation, and that ordinarily judgments should not be vacated [or revised] after the passage of the 30-day review period.” *Bland v. Hammond*, 177 Md. App. 340, 347–48 (2007) (internal citation omitted).

We review a circuit court’s exercise of its revisory power over a judgment for abuse of discretion. *See Das v. Das*, 133 Md. App. 1, 22-23 (2000). It is an abuse of discretion for the court to revise an enrolled judgment absent a showing of fraud, mistake,

or irregularity. *See Brockington v. Grimstead*, 176 Md. App. 327, 359 (2007) (“an exercise of discretion based upon an error of law is an abuse of discretion”), *aff’d* 417 Md. 332 (2010). The showing of fraud, mistake, or irregularity must be made by clear and convincing evidence. *Thacker v. Hale*, 146 Md. App. 203, 217 (2002).

In the case at bar, the parties acknowledge that Rule 2-535(b) applies and that there was no fraud or irregularity in the judgment as entered. Ms. Kim contends there was no mistake either. Within the meaning of Rule 2-535(b), the term mistake is “limited . . . to jurisdictional error, such as where the Court lacks the power to enter judgment.” *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51 (2003). Ms. Kim argues that the court’s subject matter jurisdiction over the divorce proceeding included the authority to determine the marital character of the Property and to order Mr. Sunwoo not to claim any value of the Property for himself. Accordingly, because the court had jurisdiction to enter the challenged provision of the divorce judgment, there was no jurisdictional mistake, and the court abused its discretion by vacating that provision more than thirty days after the judgment was entered.

Mr. Sunwoo responds that the portion of the judgment pertaining to the Property was the product of a jurisdictional mistake because the court lacked subject matter jurisdiction to affect title to the Property. In his view, that mistake empowered the court to revise the enrolled judgment and specifically to vacate that part of the judgment, under Rule 2-535(b).

The sole issue before us is whether the court had subject matter jurisdiction in the divorce case to order that the Property “shall remain [Ms. Kim’s] sole and separate property without any claim from [Mr. Sunwoo].” The Court of Appeals’ decision in *Eckard v. Eckard*, 333 Md. 531 (1994), and its in depth review of the pertinent case law, is instructive in this regard.

In *Eckard*, a husband and wife entered into an on-the-record settlement agreement in their pending divorce case. They agreed that husband would sell certain jointly titled real property in Florida and split the proceeds evenly with wife, unless she bought him out. She did not do so, and the Florida property was listed for sale. An offer was made for the full list price. When wife would not cooperate in the sale, husband sought an order in the divorce case compelling her to execute “documents reasonably required to sell the Florida property,” or, if she did not do so, to appoint a trustee to sell that property. *Id.* at 535. The court granted that relief. Wife refused to execute a power of attorney that would enable husband to sell the Florida property. Husband moved the court to appoint a trustee, and that motion was granted as well. Wife noted an appeal, which was dismissed for failure to file a brief.

Meanwhile, husband filed suit in Florida to enforce the order appointing a trustee to effectuate the sale. The Florida court dismissed his lawsuit, ruling that the Maryland order was “not entitled to full faith and credit” because it was an unlawful attempt to partition a Florida property. *Id.* at 536–37. In light of that ruling, the prospective buyers withdrew their contract and were refunded their deposit.

Eventually, husband filed a motion in the divorce case asking the court to hold wife in contempt for failing to execute a power of attorney authorizing him to sell the Florida lots on their behalf. The court held wife in contempt and ordered her confined for 120 days or until she executed the document. Wife appealed, and the Court of Appeals granted a writ of *certiorari* before consideration by this Court.

The Court of Appeals framed the issue before it as whether the circuit court in the divorce case had subject matter jurisdiction to order wife to grant husband a power of attorney to enable him to sell an out-of-state property on threat of contempt. Wife argued that the court's doing so was an "attempt[] directly to affect the title to land in Florida." *Id.* at 540. The Court rejected this argument, reasoning that the circuit court had exercised its well-established equitable authority to "act[] on the person[,]” and was not directly exercising jurisdiction over the Florida property. *Id.* The Court found *Binney's Case*, 2 Bland 99 (1829), illustrative of that distinction. There, the Court of Appeals opined:

[I]f a defendant be found here [in Maryland] he may be decreed to pay money, or to account for the rents and profits of lands lying in another, or a foreign country, which he had held and enjoyed; or if a deed of lands in a foreign country be found to be fraudulent, it may be ordered to be delivered up and cancelled; or in specific performance of a contract for land in another State, such a conveyance may be ordered as shall be sufficient according to the law of the State where it lies. But the Court will not decree a partition of such land, or in any manner directly decide upon the title to it, or upon the validity of a deed or will as a material part of the title; nor found the relief granted upon the strict title to such property itself.

Id. at 541–42 (quoting *Binney's Case* at 144–45) (emphasis omitted).

The *Eckard* Court next explained why wife’s reliance upon *Fall v. Eastin*, 215 U.S. 1 (1909), was misplaced. In *Fall*, a husband and wife were going through a divorce in the state of Washington. In the course of the marriage, the husband had acquired real property in Nebraska titled in his name but constituting community property. The court entered a decree “granting [wife] a divorce, and setting apart to her the land in controversy as her own separate property forever, free and unencumbered from any claim of [husband] thereto,” and ordering husband to convey the land to wife. *Fall*, 215 U.S. at 4. Husband disobeyed the order and instead conveyed the property to a third party. In response, the Washington court appointed an officer of the court to grant wife a deed to the Nebraska property. The deed then was recorded in Nebraska.

At the same time, wife brought an action to quiet title in Nebraska, seeking to invalidate husband’s conveyance of the property to the third party. She argued that her deed to the Nebraska property was entitled to full faith and credit under the federal constitution. The Supreme Court of Nebraska held that it was not.

The case reached the United States Supreme Court, which affirmed. It opined:

[W]hen the subject matter of a suit in a court of equity is within another state or country, but the parties [are] within the jurisdiction of the court, the suit may be maintained and remedies granted which may directly affect and operate upon the person of the defendant, and not upon the subject-matter, although the subject-matter is referred to in the decree, and the defendant is ordered to do or refrain from certain acts toward it, and it is thus ultimately but *indirectly* affected by the relief granted. In such case, the decree is not of itself legal title, nor does it transfer the legal title. It must be executed by the party, and obedience is compelled by proceedings in the nature of contempt, attachment, or sequestration. On the other hand, where the suit is strictly local, the subject-matter is specific property, and the relief, when granted, is such that it *must* act directly upon the subject-matter, and not

upon the person of the defendant, the jurisdiction must be exercised in the state where the subject-matter is situated.

Id. at 11–12 (emphasis in original) (citing 3 Pom. Eq. Jur. § 1317, 1318, and notes). In other words, “a court of equity, having authority to act upon the person, may indirectly act upon real estate in another state, through the instrumentality of this authority over the person.” *Id.* at 8. The Court cited *Corbett v. Nutt*, 77 U.S. (10 Wall.) 474, 475 (1870), for the established doctrine that “[a] court of equity, acting upon the person of the defendant, may decree a conveyance of land situated in another jurisdiction, and even in a foreign country, and enforce the execution of the decree by process against the defendant.” *Fall*, 215 U.S. at 9. The Washington court had acted directly upon the real property in Nebraska, however, by, through an agent of the court, issuing a deed conveying the Nebraska property to wife.

The *Eckard* Court explained that the holding in *Fall* did not support wife’s “position that the [Maryland court] had no subject matter jurisdiction to direct her to sign the power of attorney in Maryland, even if it would indirectly affect property in Florida.” *Eckard*, 333 Md. at 544. Rather, the *Fall* Court had recognized that a court could compel a person “properly before it” “to act in relation to property not within the jurisdiction,” so long as the court did not act “directly on the property nor affect the title.” *Id.* at 545 (quoting *Donigan v. Donigan*, 208 Md. 511, 522 (1956)). Thus, “[f]rom the standpoint of the power of the equity court, there is no difference between compelling, by contempt, the signing of the deed, and compelling, by contempt, the signing of a power of attorney to sign a deed.” *Id.* at 546.

The *Eckard* Court summarized additional cases illustrating this principle, which rests upon the distinction between *in personam* jurisdiction, *i.e.*, jurisdiction over the person, and *in rem* jurisdiction, *i.e.*, jurisdiction over the thing. *See Massie v. Watts*, 10 U.S. (6 Cranch) 148 (1810) (holding that an equity court can enter a decree affecting a person within the court’s jurisdiction even though lands outside the jurisdiction may be affected as well); *Stansbury v. Fringer*, 11 G. & J. 149 (Md. 1840) (holding that a Maryland court with jurisdiction over the person of the defendant could grant specific performance, ordering the defendant to execute a deed conveying certain land in Ohio); *White v. White*, 7 G. & J. 208 (Md. 1835) (affirming a Maryland equity court’s dismissal of a bill seeking an *in rem* decree for sale of property outside the court’s jurisdiction and over which it had no territorial jurisdiction).

We return to the case at bar. The circuit court had personal jurisdiction over Mr. Sunwoo, who was living in Maryland and was served here. *See* Md. Code (1974, 2013 Repl. Vol.), § 6-102(a) of the Courts and Judicial Proceedings Article (“[a] court may exercise personal jurisdiction as to any cause of action over a person domiciled in, [or] served with process in . . . the State”). It had subject matter jurisdiction over the issues of ownership of real property acquired by the parties before or during the marriage, *see* Md. Code (1999, 2012 Repl. Vol.), § 8-202(a)(2) of the Family Law Article (“FL”) (“When the court grants an annulment or an absolute divorce, the court may resolve any dispute between the parties with respect to the ownership of real property”); and whether that real property was “marital property,” *see* FL § 8-203(a) (“In a proceeding for an

annulment or an absolute divorce, if there is a dispute as to whether certain property is marital property, the court shall determine which property is marital property.”). In assessing whether to grant a monetary award to adjust the equities, the court was required to consider “the value of all property interests of each party” and it had subject matter jurisdiction to do so. FL § 8-205(b)(2).

As *Eckard* and the cases discussed therein make clear, in deciding those issues, the circuit court could act directly upon property within the territorial limits of Maryland and could act directly upon the persons before the court, over whom the court had jurisdiction. In exercising personal jurisdiction over those before it, the court could grant remedies that operated upon them with respect to property outside the court’s territorial jurisdiction and therefore operated *indirectly* upon such property. What the court could not do was act *directly* upon property outside its territorial jurisdiction.

In its opinion and order in the divorce case, the court found that the Property was owned by Ms. Kim (as noted, title was not disputed) and thus was her sole and separate non-marital property. These were decisions on issues plainly within the circuit court’s subject matter jurisdiction. The court also had jurisdiction to direct either of the parties before it to do acts or refrain from doing acts with respect to the Property. *Fall*, 215 U.S. at 11–12 (equity court may order a person within its jurisdiction “to do or refrain from certain acts toward [property outside of its territorial jurisdiction]”). This included the authority to order Mr. Sunwoo *not* to make a claim to the Property in a court outside Maryland, or, if a claim already had been made, to withdraw it, so long as the withdrawal

would be carried out in accordance with the law of the jurisdiction in which the claim was made. These are remedies controlling Mr. Sunwoo's conduct only and indirectly affecting the Property. They are not rulings of the court directly affecting the Property, such as an order to partition. Indeed, the language employed by the court in this case is similar to that used by the Washington court in *Fall v. Eastin*. The United States Supreme Court made clear there that the problem in that case was not with that language. The Washington court was empowered to order the husband in that case to refrain from claiming the Nebraska property and to convey the property to the wife. He could have been held in contempt or otherwise sanctioned for failing to do so. The problem was that the Washington court, through its agent, issued a deed purporting to transfer the Nebraska property to wife.

Nor do the remedies granted by the court in this case directly control the conduct of another court, that is, the court in the South Korea lawsuit. We do not read the language ordering that the Property "shall remain [Ms. Kim's] sole and separate property without any claim from" Mr. Sunwoo as directly affecting anything other than Mr. Sunwoo's actions. To be sure, the indirect result of Mr. Sunwoo dismissing the action he brought in South Korea to lay claim to the Property will be that the South Korea court will not rule on his claim. It remains, however, that the circuit court by its order was exercising jurisdiction over Mr. Sunwoo, not over property or a court outside of Maryland.

Consequently, there being no jurisdictional mistake affecting the divorce judgment, and in the absence of fraud or irregularity, the circuit court did not have revisory power over its April 1, 2016 judgment more than thirty days after it was entered. Accordingly, we shall reverse the portion of the court's September 15, 2016 order granting Mr. Sunwoo's motion to revise and vacating the portion of the April 1, 2016 judgment pertaining to the Property. That reversal operates to reinstate the vacated portion of the court's April 1, 2016 judgment.³

**SEPTEMBER 15, 2016 ORDER
REVERSED IN PART. COSTS TO
BE PAID BY THE APPELLEE.**

³As noted, the September 15, 2016 order also denied Ms. Kim's motion for specific performance. Ms. Kim did not raise in her brief in this appeal the question whether the court erred in denying that motion. We note that to obtain specific performance of the sort Ms. Kim sought, that is, an order directing Mr. Sunwoo to sign a document dismissing the South Korea lawsuit, she would need to show that such a dismissal is permitted by South Korea law.