

Circuit Court for Montgomery County
Case No. C-15-FM-22-002562

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 19

September Term, 2025

C.J.

v.

N.N.

Wells, C.J.,
Berger,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: September 30, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises out of a contested custody dispute between C.J. (“Father”) and N.N. (“Mother”) over their two minor children, Z.J. and M.J. Around the time of the couple’s separation in 2022, Mother began to suspect that Z.J. had been sexually abused by Father. Mother recorded a conversation with Z.J. about the suspected sexual abuse, transcribed it, and then had a friend translate it from Mandarin to English. A subsequent investigation by Child Protective Services ruled out sexual assault by Father.

During the custody trial, Father argued that Mother fabricated the sexual abuse allegations to destroy his relationship with the children. Mother countered that she only made the allegations because she was legitimately concerned about Z.J.’s safety. The Circuit Court for Montgomery County awarded primary physical custody to Mother. In January 2025, Father filed a Motion to Vacate the Custody and Access Order, alleging that it was obtained by Mother’s fraudulent withholding of the full set of recordings, transcripts, and translations, which Father claims contain various inaccuracies. The trial court denied Father’s motion. Father then filed a Motion to Revise the denial of his Motion to Vacate, which the trial court also denied.

On appeal, Father presents two questions for our review, which we consolidate and rephrase as one as follows:¹

¹ Father phrased the questions as follows:

1. Did the Motions Court err in finding no fraud by Wife?
2. Did the Motions Court err in denying Husband’s January 5, 2025 and February 3, 2025 Motions to Revise the September 20, 2023 Custody and Access Order, pursuant to Rule 2-535(b), on grounds of extrinsic fraud by Wife?

Whether the circuit court erred by denying Father's Motion to Revise the denial of his Motion to Vacate the Custody and Access Order.

For the reasons explained herein, we answer in the negative and affirm.

BACKGROUND

In March 2017, Father, who was born in the United States, and Mother, a Chinese citizen, married in China. That September, the couple welcomed their first daughter, Z.J. In January 2019, Father returned to the United States while Mother and Z.J. remained in China. In August 2019, Father returned to China after applying for a visa for Mother and Z.J. Two months later, in October 2019, Father, Mother, and Z.J. moved to the United States. Upon arriving in the United States, the family lived in Father's parents' spare townhome ("the townhome").

After the onset of COVID, Father and Mother discussed moving into Father's parents' home to assist with the care of Father's mother and grandmother who were both experiencing health issues. Father, Mother, and Z.J. eventually moved into Father's parents' home, and Mother -- who was not working at the time -- began caring for Father's mother and grandmother. During this time, Father and Mother had many arguments regarding Mother's care of Father's mother and grandmother and Mother's desire to obtain employment outside of the house and enroll Z.J. in daycare.

Eventually, Father, Mother, and Z.J. moved back into the townhome. Thereafter, in November 2020, Father left for three months of Army basic training out of state. After Father returned home from basic training, Mother began working at a restaurant and the couple enrolled Z.J. in daycare. In the fall of 2021, Father started a master's degree

program requiring night classes and significant work throughout the week and weekend. The couple continued to have arguments concerning their respective parenting styles, Mother's work, and Z.J.'s childcare.

In November 2021, Father and Mother welcomed their second daughter, M.J. Three months later, on February 17, 2022, Father and Mother had a prolonged argument that resulted in Mother obtaining a protective order against Father, Father and Mother separating, and Father moving out of the townhome. The final protective order was granted by consent on March 3, 2022, and Father agreed to have no access to Z.J. and M.J. (collectively, "the children") except for weekly Zoom calls. Father violated the protective order by contacting Mother via text message numerous times.

Later in February 2022 -- shortly after the separation -- Mother reported suspicions that Father had sexually abused Z.J. to Child Protective Services ("CPS"). Around the same time, Mother recorded a conversation with Z.J. in Mandarin, transcribed it, and had a friend, Angela Lee ("Ms. Lee"), help her translate it into English in which Z.J. disclosed the alleged sexual abuse ("the recordings"). After reviewing the results of Z.J.'s subsequent physical exam and interviewing Father and Z.J., CPS ruled out sexual abuse.

On May 4, 2022, Father filed a complaint for limited divorce² in the Circuit Court for Montgomery County. In October 2022, the parties entered a *pendente lite* agreement, pursuant to which Father was granted supervised visitation with the children. From October 2022 to July 2023, Father had weekly supervised visits with the children.

² Mother later filed a counter-complaint for absolute divorce.

In October 2022, a custody evaluator submitted a Report of Custody/Visitation Evaluation to the trial court after spending time observing both Mother and Father with the children (“Custody Evaluation”). The Custody Evaluation noted that, based on CPS records reviewed, there was no credible evidence that C.J. sexually abused either child. The evaluation further provided that there was no evidence of Mother making up the allegations with ill intent. Further, the Custody Evaluation mentioned Mother’s acknowledgment that she used leading questions when talking to Z.J. about the sexual abuse allegations, “which evidently led to [Z.J.’s] disclosure.”

The case proceeded through discovery. On July 13, 2023, Father deposed Elly Wu, a case manager at an organization providing services to domestic violence survivors that Mother had contacted. During the deposition, Ms. Wu answered questions about an email Mother had forwarded her which included the four recordings. Counsel for both parties discussed whether Mother had produced all four recordings during discovery and Mother assured anything not previously provided would be produced. No questions were asked about the transcript and translations that the email exhibit also referenced.

From August 21 to August 23, 2023, the circuit court held a custody trial at which both Father and Mother were represented by counsel. Although the recordings were not admitted into evidence, both parties elicited testimony concerning their existence in the context of Mother’s sexual abuse allegations during the trial. During his cross-examination of Mother’s friend, Ms. Lee, Father asked whether Ms. Lee had interpreted the recordings. Ms. Lee confirmed that she had but noted she had not disclosed the interpretations to any third parties. Father did not ask any further questions regarding Ms. Lee’s interpretations.

During closing arguments, Father argued that Mother fabricated the sexual abuse allegations to harm his relationship with the children based on Mother's admission in the Custody Evaluation that she used leading questions when eliciting Z.J.'s disclosure and the fact that CPS ruled out sexual abuse. Based on this, Father argued that Mother was unfit to have custody of the children. Mother countered that she made the sexual abuse allegations and recordings of Z.J. because of a legitimate concern for Z.J.'s safety.

On September 7, 2023, the trial court delivered its ruling. The court addressed the sexual abuse allegations in the context of the fitness of each parent:

[T]here was a lot to think about here because one of the big issues that was discussed, testified about, argued about at this trial was a sexual abuse allegation that the mother made against the father. And it was something that was discussed extensively in the custody evaluation report that was moved into evidence without objection. Both parties wanted it into evidence And I read it extensively. And while the mother wasn't alleging -- or wasn't arguing for her position based on sexual abuse, because she understood that the findings were not -- that it was ruled out, it came up. And I have to address it. And additionally, because then the father was arguing that it should be -- the allegation should be considered because it bears on the fitness of the mother.

The court went on to conclude that there "is no evidence that abuse [of Z.J.] did occur." Concerning the bearing of the sexual abuse allegations on Mother's fitness, the circuit court considered the custody evaluator's statement that she had no information to suggest that Mother "had ill intent when making these allegations, as she may have been legitimately concerned for [Z.J.'s] safety."³

³ The circuit court found the custody evaluator's findings to be credible, noting that it "was an extremely thorough, detailed, and well-written report."

Though the court expressed concern “about some of the actions taken by” Mother, it did “not find that [] [M]other made [the sexual abuse allegations] up with ill intent.” The trial court extensively discussed how the allegations could have arisen absent any ill intent of Mother, noting that she may not have understood how susceptible young children are to leading questions, that she may have been influenced by Ms. Lee, and that Z.J. -- who made the statements in the recordings shortly after Father had disciplined her -- may have been more willing to answer certain questions affirmatively because she was angry at Father. Weighing the evidence, the circuit court found that both parents were fit. Ultimately, after thoroughly considering all the Best Interest of the Child factors, the circuit court awarded joint legal custody of the children to Mother and Father with no tie-breaker authority to either parent, primary physical custody to Mother, and unsupervised visitation to Father every other weekend and every Wednesday evening. The circuit court kept the child support outlined in the *pendente lite* order in effect and deferred the issue of child support to the divorce merits trial. On September 20, 2023, the circuit court entered the corresponding Custody and Access Order.

After the entry of the Custody and Access Order, several filings not relevant to this appeal were made by Father and Mother.⁴ On November 4, 2024, after a two-day divorce

⁴ Some of these filings and corresponding court orders not relevant here include the following:

On October 17, 2023, Father filed a separate action alleging defamation, tortious interference with custody and visitation, and civil conspiracy -- all stemming from the sexual abuse allegations and recordings of Z.J. -- against Mother, two of Mother’s witnesses in the custody trial, and others. On August 11-15, 2025, the Circuit Court for Montgomery County held a hearing on this matter. On August 22, 2025, the court entered

merits trial, the circuit court entered an order granting an absolute divorce, denying Mother's request for alimony, and ordering a new child support obligation.

On January 5, 2025, Father filed a Motion to Vacate the September 20, 2023 Custody and Access Order ("Motion to Vacate") under Maryland Rule 2-535(b) ("Rule 2-535(b)"). In this motion, Father alleged that he did not receive all four recordings and the corresponding transcripts and translations until July 2024 through a discovery request in the defamation action and that the translations included inaccuracies. Father argued that

an order denying Father relief. On August 25, 2025, Father noted a timely appeal to this Court.

On November 22, 2023, Father filed a Motion for Mediation and Emergency Hearing after Mother's counsel informed Father that Mother was two months behind on rent and may be evicted because of Father's failure to pay child support. The court denied the motion on December 1, 2023.

On February 12, 2024, Mother filed a Petition for Contempt and Enforcement alleging that Father was five months in arrears. The hearing for this matter was consolidated with the divorce merits trial. After a two-day trial on October 28 and 29, 2024, the circuit court entered an order granting Mother's Petition for Contempt and Enforcement on November 4, 2024. After Father paid the requisite \$1,000 to Mother, the court entered an order purging Father's contempt on December 23, 2024.

On July 1, 2024, Father filed a Motion to Modify *Pendente Lite* Order, alleging that the support obligations were no longer tenable due to health struggles making full-time employment unfeasible. The court entered an order denying the motion on August 1, 2024.

On December 13, 2024, Mother filed a Petition to Modify Custody in which she requested sole legal custody of the children citing Father's "refus[al] to cooperate in getting passports for the minor children" and "lack of cooperation [which] complicates [her] ability to make timely decisions for the children." Mother filed an amended petition on June 5, 2025. On August 22, 2025, the circuit court granted Mother's amended petition in part, awarding Mother sole legal custody of the children. On August 25, 2025, Father noted a timely appeal to this Court.

Mother’s alleged failure to provide all the recordings, transcripts, and translations during discovery for the custody proceedings and her alleged “malicious mistranslations” constitute extrinsic fraud sufficient to meet the fraud requirement of Rule 2-535(b). Without holding a hearing, the circuit court denied Father’s Motion to Vacate on January 29, 2025. The court’s short order provides: “having found no fraud, mistake, or irregularity, the Motion to Vacate September 20, 2023 Custody and Access Order [is] DENIED.”

On February 3, 2025, Father filed a Motion to Revise the January 30, 2025 Denial of the Motion to Vacate September 20, 2023 Custody and Access Order and Request for Hearing (“Motion to Revise”). In his motion, Father argued that the alleged extrinsic fraud related to the recordings and translations made by Mother hindered his ability to fully present his case and prevented the actual dispute -- which Father characterized as Mother’s “*scienter* in making the egregious false allegations of abuse” -- from being submitted to the court. Further, Father argued that he had proved constructive fraud sufficient to satisfy the fraud requirement of Rule 2-535(b).

In support of his Motion to Revise, Father provided several supporting exhibits including an excerpt from Ms. Wu’s July 13, 2023, deposition and the email forwarded to Ms. Wu by Mother that was being discussed during the excerpted portion of the deposition. In the email, Mother attached the recordings, stated that there were four of them, and mentioned that she had transcribed the recordings and had them translated into English. In the excerpted portion of Ms. Wu’s deposition, Father’s counsel stated that only one recording had been provided despite the email stating there were four, and Mother’s

counsel stated they would ensure all recordings and summaries were provided to Father. On March 3, 2025, the circuit court denied Father’s Motion to Revise with no explanation of its reasoning. Father filed a timely appeal which is before us now.

STANDARD OF REVIEW

Maryland Rule 2-535(b) provides that, “[o]n 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.”

Where fraud, mistake, or irregularity are determined to exist, we normally review the circuit court’s decision whether to grant a motion to revise a judgment pursuant to Maryland Rule 2-535(b) under an abuse of discretion standard. *See Peay v. Barnett*, 236 Md. App. 306, 315 (2018); *see also Wells v. Wells*, 168 Md. App. 382, 394 (2006). The existence of “a factual predicate of fraud, mistake, or irregularity necessary to support vacating a judgment under Rule 2-535(b),” however, is a question of law. *Wells*, 168 Md. App. at 394 (quoting *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 n.5 (1997)). We therefore review the trial court’s decision regarding the existence of fraud, mistake, or irregularity without deference. “The burden of proof in establishing fraud, mistake, or irregularity is clear and convincing evidence.” *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008).

Facey v. Facey, 249 Md. App. 584, 601 (2021).

DISCUSSION

I. The circuit court did not err in finding that no factual predicate of fraud existed and denying the Motion to Vacate and Motion to Revise the September 20, 2023 Custody and Access Order.

On appeal, Father argues that the circuit court erred in finding no fraud and denying his Motion to Vacate and Motion to Revise the September 20, 2023 Custody and Access Order (collectively “Rule 2-535(b) motions”). In support of this contention, Father argues

that Mother’s failure to provide all the recordings, transcripts, and translations during discovery for the custody trial constitutes extrinsic fraud sufficient to support vacating the September 20, 2023, Custody and Access Order. This failure, Father asserts, prevented him from having “concrete evidence” that Mother “mistranslated the [] [r]ecordings” at the time of the custody trial. Additionally, Father argues that the circuit court erred by not considering that constructive fraud -- which Father asserts he sufficiently proved -- meets the fraud requirement of Rule 2-535(b). Mother counters that Father has not adduced evidence sufficient to support a finding of fraud, and accordingly, the circuit court did not err in denying Father’s Rule 2-535(b) motions. We agree with Mother and hold that the circuit court did not err in denying Father’s Rule 2-535(b) motions.

“Maryland courts ‘have narrowly defined and strictly applied the term[] fraud . . .’ in order to ensure finality of judgments.” *Thacker v. Hale*, 146 Md. App. 203, 217 (2002) (quoting *Platt v. Platt*, 302 Md. 9, 13 (1984)). Indeed, “[i]n order to trigger the revisory power on account of fraud under Rule 2-535(b), ‘a movant must show extrinsic fraud, not intrinsic fraud.’”⁵ *Facey*, 249 Md. App. at 605 (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008)). We discussed what constitutes extrinsic fraud at length in *Facey*:

Extrinsic fraud perpetrates an abuse of judicial process by preventing an adversarial trial and/or impacting the jurisdiction of the court. Fraud prevents an adversarial trial when it keeps a party ignorant of the action and prevents them

⁵ This is so regardless of whether Father is correct that clear and convincing evidence of constructive fraud meets the fraud requirement under Rule 2-535(b). *See, e.g., City of College Park v. Jenkins*, 150 Md. App. 254, 273–74 (2003) (holding that “*extrinsic* constructive fraud” would meet the fraud requirement of Rule 2-535(b) in a quiet title action) (emphasis added), *vacated on other grounds*, 379 Md. 142 (2003).

from presenting their case . . . or . . . the fraud prevents the actual dispute from being submitted to the fact finder at all. . .

Extrinsic fraud is normally collateral to the issues tried in the case in which the judgment is rendered. A court will not reopen a judgment because a party discovers fraud that took place during the trial or was contained within the trial . . .

Id. at 633 (emphasis omitted).

“In determining whether or not extrinsic fraud exists, the question is not whether the fraud operated to cause the trier of fact to reach an unjust conclusion, but whether the fraud prevented the actual dispute from being submitted to the fact finder at all.” *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990) (citing *Fleisher v. Fleisher Co.*, 60 Md. App. 565, 571 (1984)). Intrinsic fraud, on the other hand, “relates to facts that were before the court in the original suit and could have been raised or exposed at the trial level.” *Facey*, 249 Md. App. at 633 (emphasis omitted).

In *Schwartz v. Merchants Mortgage Co.*, the Supreme Court of Maryland provided “[e]xamples of what would be considered ‘extrinsic’ fraud”:

Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client’s interest to the other side,—these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing.

272 Md. 305, 309 (1974) (quoting *United States v. Throckmorton*, 98 U.S. 61, 65–66 (1878)).

Assuming, without deciding, whether Father has produced facts sufficient to establish fraud, we consider whether this alleged fraud is extrinsic or intrinsic to the custody trial itself. Father cites *Hresko* for the proposition that withholding evidence properly requested in discovery does constitute extrinsic fraud when the opposing party does not choose to settle and participates in pertinent discovery and trial. Father reasons that this is so because in *Hresko*, “we held there was no extrinsic fraud *because* the husband chose to file an uncontested answer and permitted the matter to go to judgment.” *Facey*, 249 Md. App. at 628 (emphasis added) (citing *Hresko*, 83 Md. App. at 236). Father misunderstands our holding in *Hresko*. *Hresko* did not establish a *per se* rule that extrinsic fraud is established whenever a party learns after trial that something was not provided to them during discovery despite their diligent litigation of the case. *Hresko* involved alleged fraud during negotiation of a property settlement agreement that was later incorporated into the parties’ divorce decree. 83 Md. App. at 229–31 (1990). We held that, because each party’s assets were central to the property settlement agreement that was later incorporated into the divorce decree, any misrepresentation or concealment of such assets during the negotiation process was intrinsic to the trial itself. *Id.* at 235.

Here, although the recordings, transcripts, and translations were not introduced into evidence, they do pertain to facts contained within the original custody trial. Indeed, a significant issue raised at trial concerned parental fitness. Both parties presented arguments about the bearing of the sexual abuse allegations underlying the recordings on Mother’s

fitness. Moreover, the allegations were central to the trial court's custody determination. The court considered the underlying sexual abuse allegations, the lack of credible evidence supporting those allegations, and Mother's use of leading questions to elicit Z.J.'s recorded disclosure when assessing Mother's fitness. Additionally, the court weighed Ms. Lee's testimony -- which it found deeply problematic⁶ -- and considered the influence Ms. Lee could have had on Mother making the sexual abuse allegations.

The court also considered Father's argument that the allegations were made with ill intent to destroy his relationship with the children and Mother's argument that she made the allegations because of a legitimate concern for Z.J.'s safety. Although some of Mother's actions concerned the trial court, it ultimately found she did not have ill intent in making the allegations and was a fit parent. The court also found Father to be fit but found that other factors not at issue here weighed in favor of awarding Mother primary physical custody. In sum, the recordings and translations at issue here pertained to facts contained within the original custody trial. Accordingly, the alleged fraud is not collateral to the entry of the Custody and Access Order and does not constitute extrinsic fraud.

Further, even taking Father's allegations as true, Mother's alleged failure to provide all recordings and translations during discovery did not prevent an adversarial trial. Indeed, as the supporting exhibits Father filed accompanying his Motion to Revise illustrate, Father had notice of the existence of the four recordings and corresponding transcripts and English

⁶ Ms. Lee had testified that her assessment of Mother's character for truthfulness would not change if she found out that Mother had lied when making the sexual abuse allegations -- an opinion that gave the court considerable pause.

translations on July 13, 2023, at the latest -- more than a month before the custody trial. Father made no argument at trial about not having received the full set of recordings and translations. Moreover, when cross-examining Ms. Lee, Father asked if she had listened to and interpreted the recordings. Ms. Lee responded affirmatively, but no further questions regarding the recordings were asked. Accordingly, Mother's alleged fraud did not keep Father from fully presenting his case, nor did it foreclose Father's ability to contest Mother's intent in making the underlying sexual abuse allegations. Under these circumstances, the alleged fraud is intrinsic and does not trigger the circuit court's revisory power under Maryland Rule 2-535(b). Therefore, the trial court did not err in denying Father's Rule 2-535(b) motions.

CONCLUSION

For the foregoing reasons, we hold that the alleged fraud does not satisfy the requirement of extrinsic fraud under Maryland Rule 2-535(b). We, therefore, affirm the judgment of the circuit court.

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