Circuit Court for Montgomery County
Case No. 283503V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00029

September Term, 2017

PREMIER CAPITAL, LLC

v.

CITIZENS BANK OF PENNSYLVANIA

Graeff,
Nazarian,
Fader

JJ.

Opinion by Fader, J.

Filed: July 13, 2018

Premier Capital, LLC appeals from an order of the Circuit Court for Montgomery County granting Citizens Bank of Pennsylvania's motion to vacate a default judgment related to a property garnishment. Because Citizens waited until more than 30 days after the judgment was entered before filing its motion to vacate, the judgment could only be vacated for fraud, mistake, or irregularity. Md. Rule 2-535(b). The circuit court set it aside based on both fraud and irregularity. We reverse.

BACKGROUND

Premier obtained a foreign judgment against Charles Koehler, an individual who was, during the relevant period, an employee of Citizens. After enrolling the judgment in Maryland, Premier requested two writs of garnishment against Citizens: (1) in October 2015, a Writ of Garnishment of Property; and (2) in January 2016, a Writ of Garnishment of Wages. The circuit court issued the writs and Premier effected service of process of each on Citizens's resident agent in Maryland, CSC-Lawyers Incorporating Service Company ("CSC").

Citizens does not dispute the validity of service. Indeed, Citizens admitted below that unexplained communication errors—either between CSC and Citizens or within Citizens—had resulted in the proper department within Citizens not receiving documents that were properly served on CSC in other cases as well as this one.[1] Regardless, for reasons having nothing to do with Premier or its counsel, the appropriate department within

[1] Counsel for Citizens explained to the circuit court that Citizens was "having issues" with CSC and that "this isn't the only case that they're currently having issues with." At that point, they had not yet figured out if the problem was on "[CSC's] side or on the bank's side. But obviously, there's a hole in the system."

Citizens apparently did not receive timely notice of either of the writs. As a result, Citizens failed to respond to either garnishment.

On February 4, 2016, the circuit court entered an order of default against Citizens on the property garnishment. On May 16, 2016, Premier filed and served on CSC: (1) a motion for judgment by default as to the property garnishment; and (2) a motion to show cause as to the wage garnishment. Throughout, Citizens remained silent.

In early June 2016, nearly eight months after Premier first sought a writ of garnishment against Citizens as to non-wage property, Premier's counsel reached out directly to Citizens to find out why it had not responded. The first contact appears to have been telephonic, followed by an e-mail exchange on June 6 between Premier's counsel's assistant and Daniel Miceli, a Citizens Payroll Tax & Garnishment Specialist. The level of communication quickly escalated. By June 9, Premier's counsel was corresponding with Lois Eastman, Citizens's Payroll Tax, Garnishment and Relocation Manager, VP. Citizens's in-house counsel, Harold Kofman, became involved by June 14. Although different personnel were involved, all of the e-mails in the record are in a single chain covering the initial contact on June 6 through August 9.

The circuit court concluded that the e-mails demonstrate fraud on behalf of Premier's counsel in failing to disclose that Premier had moved for judgment on the property garnishment. However, Premier's counsel mentioned the motion for judgment in the e-mails twice. On June 7, in an admittedly imprecise e-mail, Premier's counsel referenced "a pending motion to show cause and for judgment." Mr. Miceli's response the following day indicated a belief, purportedly based on a prior telephone conversation,

(1) that this was a single motion and (2) that it would be withdrawn if Citizens came into compliance with the wage garnishment. Premier's counsel's June 9 response corrected both of these misunderstandings. It clarified that there were two separate motions by referencing both: "the motion to show cause or the motion for default judgment." It also expressly (1) insisted that the money overdue under the wage garnishment must be paid and (2) stated that doing so would not fully resolve the "pending motions." Although the response arguably hinted that both garnishments might be resolved if Citizens were to pay not only the amounts owed under the wage garnishment but also an amount to cover Premier's counsel and other fees, no promise was made and Premier's counsel also stated that Citizens's "failure to properly respond to two garnishments deprived my client of money for months and caused a lot of extra time and money." Moreover, as we shall see, it is clear that Citizens did not believe any settlement had been reached or promised.

Subsequent e-mails reflect Citizens's efforts to comply with the wage garnishment, including garnishing Mr. Koehler's wages going forward and compensating Premier for amounts that should have been garnished previously and for attorney's fees owed as a result of Citizens's failure to respond timely to the wage garnishment. The e-mails do not reflect any similar movement as to the property garnishment, apparently because Citizens had concluded that it did not hold any of Mr. Koehler's non-wage property.

Shortly after he became involved (around June 14), Mr. Kofman, Citizens's in-house counsel, asked Premier's counsel for "proof of service of the levy on Mr. Koehler's non-wage property." In response, Premier's counsel provided him with the writ of garnishment, the request for order of default, the order of default, and proof of service.

Premier's counsel did not attach the motion for judgment, nor did Mr. Kofman request a copy of that motion.

According an affidavit provided by Mr. Kofman, he informed Premier's counsel in June that Citizens did not have any non-wage garnishable property of Mr. Koehler and asked if Premier would vacate the default if Citizens could provide an affidavit to that effect. Premier's counsel did not respond until August 5, when he declined. Mr. Kofman then "immediately made arrangements" to retain outside counsel.

On August 15, acting on the motion for judgment that had been filed almost three months earlier, the circuit court entered judgment against Citizens as to the property garnishment in the amount of $31,222.18, plus costs and post-judgment interest from the date of the original 2007 judgment. Notably, the judgment was entered directly against Citizens for the entire amount of Mr. Koehler's debt, not just against any of Mr. Koehler's property that Citizens might be holding. The clerk sent notice of the entry of default judgment to, among others, CSC.[2]

Citizens filed a motion to vacate the judgment on September 16, 32 days after the judgment was entered. Apparently unaware of the limited grounds on which a judgment can be vacated upon a motion filed more than 30 days after entry, *see* Md. Rule 2-535(b), Citizens's motion argued primarily (1) that it did not have any garnishable property of Mr. Koehler, (2) that collecting from Citizens would thus be unfair and would unjustly enrich

[2] Notice of the judgment and order was returned as undeliverable as to two other parties, American Steel and Manufacturing Company and Mr. Koehler, neither of which is relevant to this appeal. The notice mailed to CSC was not returned.

Premier, and (3) that judgment was improper because Premier had not been required to prove its damages. Citizens argued in the alternative that the court should revise the judgment pursuant to Rule 2-535 to limit it to "any and all non-wage property of Defendant Koehler in Citizens['s] possession at the time the Writ was filed." Citizens's motion did not invoke Rule 2-535(b) nor did it make any allegation of fraud, mistake, or irregularity.

In a hearing on the motion, the circuit court raised sua sponte whether the conduct of Premier's counsel in his communication with Citizens "was a form of intrinsic fraud on the Court." Following arguments of counsel—neither party presented any evidence—the court granted the motion and vacated the judgment. The court recognized that it could not vacate the judgment on the grounds advocated by Citizens in its filings and so focused on grounds Citizens had not raised: fraud and irregularity.

Addressing fraud, the court found that Premier had committed extrinsic fraud because although "counsel [for Premier] . . . provided documents" in response to Mr. Kofman's request for copies of pleadings, he "did not include the motion for a default judgment which had been filed a full month earlier."[3] The court also concluded that Premier's counsel had allowed Citizens's in-house counsel to believe that the entire dispute would be resolved through their discussions about resolving the wage garnishment.[4]

[3] Although the court initially inquired about intrinsic fraud, it changed its focus upon being informed that only extrinsic fraud could support vacatur of a judgment under Rule 2-535(b).

[4] Two additional aspects of the court's discussion of fraud are worthy of note. First, the court seems to have relied on a mistaken belief that Premier's counsel intentionally failed to let Citizens know of a hearing on the motion for judgment that occurred on August 15. It is unclear how the court came to believe that such a hearing occurred—presumably

Turning to irregularity, the court concluded that the clerk's office should have sent the judgment not to CSC, but to Ms. Eastman. The basis for the court's conclusion was an affidavit of service in the court's file showing that, in July, Premier's counsel had served a copy of its motion and order to show cause as to the wage garnishment on Ms. Eastman rather than on CSC.[5] The court concluded that this affidavit of service provided notice to the clerk that Ms. Eastman's address, not CSC's, was the proper service address, and that the failure to use that address constituted an irregularity under Rule 2-535(b).

Following an unsuccessful attempt to alter or amend the ruling under Rule 2-534, Premier filed this appeal.[6]

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an assumption based on the fact that the motion was granted on that date—but there was no such hearing. Second, at the outset of its ruling, the court stated, "I want to make clear that the Court is not saying that in some way plaintiff's counsel misrepresented the truth or anything along those lines." However, when confronted with case law noting that "fraud must be intentionally deceptive," the court changed course and characterized Premier's counsel's communications as intentionally deceptive.

[5] The court appears to have been operating under the mistaken belief that the clerk, not Premier's counsel, had mailed the earlier show cause order to Ms. Eastman. Instead, it appears that the court's order requiring personal service on Citizens led to Premier's use of certified mail for service on Ms. Eastman.

[6] Premier states its questions presented as:

> 1. Whether the Circuit Court erred by finding that Citizens proved extrinsic fraud by clear and convincing evidence sufficient to vacate the judgment against Citizens.
>
> 2. Whether the Circuit Court erred by finding that Citizens proved an irregularity by clear and convincing evidence sufficient to vacate the judgment against Citizens.
>
> 3. Whether the Circuit Court abused its discretion in finding that Citizens acted with ordinary diligence and good faith in seeking to vacate the judgment.

DISCUSSION

"The existence of a factual predicate of fraud, mistake, or irregularity, necessary to support vacating a judgment under Rule 2-535(b), is a question of law." *Wells v. Wells*, 168 Md. App. 382, 394 (2006) (citing *In re Adoption/Guardianship No. 93321055/ CAD*, 344 Md. 458, 475 n.5 (1997)). If a factual predicate exists, we review a trial court's ruling for abuse of discretion, *Benson v. State*, 389 Md. 615, 653 (2005), which occurs "where no reasonable person would take the view adopted by the [trial] court," or when the court acts "without reference to any guiding rules or principles." *Powell v. Breslin*, 430 Md. 52, 62 (2013) (quotation omitted). "We will find an abuse of discretion when the ruling is 'clearly against the logic and effect of facts and inferences before the court[,]' when the decision is 'clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result[,]' when the ruling is 'violative of fact and logic[,]' or when it constitutes an 'untenable judicial act that defies reason and works an injustice.'" *Id.* (internal citations omitted).

I. THE MOTIONS COURT ERRED IN FINDING THAT PREMIER'S COUNSEL COMMITTED FRAUD.

Premier argues that the motions court erred in concluding that Citizens proved fraud under Rule 2-535(b) by clear and convincing evidence.[7] Although Citizens did not allege

[7] Premier also argues that it was error for the court to raise extrinsic fraud sua sponte at the hearing. Given that we reverse the motions court's decision on other grounds, we need not resolve this issue. We observe, however, that "Rule 2-535(b) provides the circuit court power to revise a default judgment after the judgment becomes final" and that "[a] motion may be treated as a motion to revise under Md. Rule 2-535 even if it is not labeled as such." *Peay v. Barnett*, 236 Md. App. 306, 321 (2018) (quotation omitted).

fraud in its motion to vacate, it now agrees with the circuit court that the e-mails in the record "painted a picture in which Premier" knowingly "continued to string Citizens along," showing intent to deceive. We disagree.

Under Rule 2-535(a), a court has "broad discretion . . . to revise its judgment within thirty days after entry." *Peay v. Barnett*, 236 Md. App. 306, 319 (2018). Once 30 days has passed, however, a court's authority to vacate a judgment is limited to that provided by Rule 2-535(b), which provides: "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." Thus, after 30 days, a default judgment, like any other judgment, "may be stricken or revised only upon a showing of fraud, mistake, or irregularity . . . ." *Peay*, 236 Md. App. at 320 (quoting *Dir. of Fin. of Balt. City v. Harris*, 90 Md. App. 506, 511 (1992)).

A party moving to set aside a judgment under Rule 2-535(b) "carr[ies] [a] significant burden of proof" to show "[t]he existence of fraud, mistake, or irregularity . . . by 'clear and convincing evidence.'" *Peay*, 236 Md. App. at 321 (quoting *Das v. Das*, 133 Md. App. 1, 18 (2000)). Moreover, a movant who carries that burden must also establish that she or he "act[ed] with ordinary diligence and in good faith upon a meritorious cause of action or defense." *Thacker v. Hale*, 146 Md. App. 203, 217 (2002) (quoting *Platt v. Platt*, 302 Md. 9, 13 (1984)).

A. The Record Contains No Evidence of Fraud.

Fraud requires proof by clear and convincing evidence that: (1) the accused party made a false representation; (2) that party knew the misrepresentation was false or made it with reckless indifference as to its truth; (3) the misrepresentation was made for the purpose

of defrauding the other party; (4) the other party reasonably relied on the misrepresentation; and (5) the misrepresentation caused injury to the other party. *Gourdine v. Crews*, 405 Md. 722, 758-59 (2008) (quoting *Md. Envtl. Tr. v. Gaynor*, 370 Md. 89, 97 (2002)). Fraud by concealment consists of "any statement or other conduct which prevents another from acquiring knowledge of a fact, such as diverting the attention of a prospective buyer from a defect which otherwise, he would have observed." *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 138 (2007). "[I]ntent to deceive the other party" is a "critical element" of fraud. *Gross v. Sussex Inc.*, 332 Md. 247, 260 (1993) (quoting *Martens Chevrolet v. Seney*, 292 Md. 328, 333 (1982)). In the context of a court's revisory power, "a firm foundation of Maryland cases" have established intent to deceive as "required in order to authorize the reopening of an enrolled" judgment for fraud. *Schwartz v. Merchs. Mortg. Co.*, 272 Md. 305, 308 (1974).

Here, Citizens did not meet its burden to show that Premier either intentionally made false statements that Citizens had the right to rely upon or intentionally concealed information. The court did not hold an evidentiary hearing on Citizens's motion, nor was one requested. Instead, the only information that was presented to the court (other than argument of counsel) consisted of (1) the e-mail correspondence between Premier's counsel and Citizens and (2) Mr. Kofman's affidavit. However, these sources, considered together and in context, do not even suggest fraud, much less suffice to prove it by clear and convincing evidence.

As an initial matter, Citizens has not identified any actual misrepresentation. Although certain e-mails are not without ambiguity, ambiguity does not equal fraud. It is

true that one early e-mail from Premier's counsel suggested a possibility that the entire dispute might possibly be resolved if Citizens were to pay what it owed as well as attorney's fees. But that e-mail made no promise and the parties' subsequent communications demonstrated that neither believed an agreement had been reached. Moreover, Premier's counsel affirmatively rejected Citizens's proposal to resolve the non-wage property garnishment on or about August 5, ten days before judgment was entered.

It is also true that Premier's counsel sent along certain documents regarding the property garnishment without sending the then-pending motion for judgment. Although Premier's counsel acknowledged at oral argument that it would have been better if he had sent the motion for judgment at the same time—and we agree that would have been the much better course—this act, in context, does not demonstrate an intent to deceive. Indeed, Mr. Kofman admitted in his affidavit that his request to Premier's counsel had been for documents showing "proof of service of the levy." In response, Premier's counsel sent exactly that, along with the motion for default, and the order of default.

Notably, although Premier's counsel referred expressly to the motion for judgment earlier in the same e-mail chain, Citizens never asked for a copy of the motion. Although Mr. Kofman claimed in his affidavit that he was unaware of the motion for judgment "until sometime in August 2016," that can only have been because he failed to read, or pay attention to, the e-mails. Regardless, Premier's counsel's express reference to the motion in the e-mail correspondence is inconsistent with an intent to hide its existence.

Premier's counsel's service of the motion for judgment on Citizens's registered agent is also inconsistent with an intent to hide it. The problems that prevented the right

people within Citizens from getting copies of that motion were either within Citizens or between Citizens and CSC. It is undisputed that Premier's counsel did everything the rules require to get a copy of that motion to Citizens. Moreover, when Citizens had not responded to the garnishments by early June, Premier's counsel affirmatively reached out to call Citizens's attention to the matter and find out why. That, as well, is inconsistent with an intention to obtain a default judgment by fraud.

In sum, the only evidence before the court falls short of being sufficient to prove by any standard, much less by clear and convincing evidence, that Premier's counsel intended to defraud Citizens, either by misrepresentation or concealment.

Moreover, even if Citizens had proven an intent to defraud, it would need to also demonstrate its own justifiable reliance on the misrepresentation or concealment. *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 394 (2010) (citing *Gourdine*, 405 Md. at 758). The trial court does not appear to have considered whether Citizens's purported reliance was reasonable. On this record, it was not. By no later than June 14, Citizens's in-house counsel was aware (1) of the existence of two writs of garnishment that had been issued against it months earlier, to which it had never responded and (2) that a default had been entered against it as to the property garnishment. Nonetheless, Citizens apparently failed to look up the publicly-available on-line docket, hire counsel to enter an appearance, obtain an affirmative representation from Premier's counsel as to the status of the case, or take any other action to protect its interests. To the extent that Citizens now argues that its failure to take any of these steps was in reliance on Premier's counsel, it failed to demonstrate that such reliance was reasonable. *See, e.g., Penn Cent. Co. v. Buffalo*

Spring & Equip. Co., 260 Md. 576, 582 (1971) (noting counsel's duty to "keep [itself] informed" as to "what is occurring in a pending case"); *Maggin v. Stevens*, 266 Md. 14, 18 (1972) (noting counsel's duty to consult the publicly-available docket).

And even if such reliance had been reasonable before August 5, when Citizens's in-house counsel determined that he needed to retain outside counsel "immediately" in light of Premier's refusal to drop the property garnishment, it would not have been reasonable thereafter. Citizens offered no reasonable explanation of its failure to protect its interests between that date and September 16, when it finally filed its motion to vacate the judgment. The court's finding of fraud was thus "clearly against the logic and effect of facts and inferences before the court." *Powell*, 430 Md. at 62 (quotation omitted).

B. The Fraud Allegations Were of Intrinsic, Not Extrinsic, Fraud.

Even if Citizens had proven fraud, it was intrinsic fraud and so insufficient for purposes of Rule 2-535(b). Because "Maryland courts have narrowly defined and strictly applied the term[] fraud" under Rule 2-535(b) "in order to ensure finality of judgments," *Thacker*, 146 Md. App. at 217, a court "may vacate an enrolled judgment for extrinsic, but not for intrinsic, fraud," *Das*, 133 Md. App. at 18; *Schwartz*, 272 Md. at 309 (discussing the "universally followed" distinction between intrinsic and extrinsic fraud); *Schneider v. Schneider*, 35 Md. App. 230, 238 (1977) ("It has long been black letter law in Maryland that the type of fraud which is required to authorize the reopening of an enrolled judgment is extrinsic fraud and not fraud which is intrinsic to the trial itself.").

Intrinsic fraud "pertains to issues involved" in the action itself, "or where acts constituting fraud were, or could have been, litigated therein." *Hresko v. Hresko*, 83 Md.

App. 228, 232 (1990) (quotation omitted). Extrinsic fraud, on the other hand, is "collateral to the issues tried in the case where the judgment is rendered," such that it "actually prevents an adversarial trial" and "prevent[s] the actual dispute from being submitted to the fact finder at all." *Id.* It includes "fraud or deception" that keeps a defendant 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 plaintiffs." *Schwartz*, 272 Md. at 309 (quoting *United States v. Throckmorton*, 98 U.S. 61, 65-66 (1878)). Such fraud must "ha[ve] prevented a fair submission of the controversy." *Schwartz*, 272 Md. at 309 (quotation omitted). Thus, for example, we found extrinsic fraud in *Fleisher v. Fleisher Co.*, where a plaintiff who also served as a corporate officer of the defendant effectively prohibited the defendant from getting notice of the case and presenting its defense. 60 Md. App. 565, 570-72 (1984); *see also City of College Park v. Jenkins*, 150 Md. App. 254 (2003), *vacated on other grounds*, 379 Md. 142 (2003) (finding constructive extrinsic fraud would exist if plaintiff improperly served an interested person in an adverse possession case).

Conversely, we held in *Das* that a husband did not prove extrinsic fraud when the trial court found that it was his own failure to apprise the court of his change of address, a "self-inflicted" wound, that led to the default judgment against him, and not his "[w]ife's alleged artifice" of using his old address. 133 Md. App. at 17-23. And in *Buffalo Spring & Equip. Co.*, the Court of Appeals held that an out-of-state lawyer who failed to answer properly-served interrogatories on behalf of a garnishee could not vacate a judgment based on allegedly false representations made by the creditor. 260 Md. at 580-82. The creditor's

conduct did not constitute extrinsic fraud; rather, the garnishee's lawyer was properly informed of the "nature of the case," but failed to "follow the usual Maryland practice" of law. *Id.* at 582.

Here as well, the alleged misrepresentations and concealment attributed to Premier's counsel can hardly be said to have been calculated to prevent, or to have actually prevented, Citizens from protecting its rights. The fault for Citizens's not receiving the documents that Premier's counsel properly served lay with Citizens or its agent, not with Premier. And although Premier's counsel did not respond as promptly as Citizens wished to an inquiry about a possible resolution, his response (1) was clear and negative, (2) caused Citizens's in-house counsel to conclude that he needed to engage outside counsel immediately to protect Citizens's interests, and (3) was made ten days before the court entered judgment and 40 days before the deadline for Citizens to file a timely motion to vacate under Rule 2-535(a). The alleged fraud, even in the light most favorable to Citizens, thus did not prevent Citizens from having its day in court.

In sum, the motions court erred in vacating the judgment based on fraud both because the record contains no evidence of fraud and because the fraud alleged, if it had occurred, would have been intrinsic, not extrinsic.

II. THE MOTIONS COURT ERRED IN FINDING THAT MAILING THE NOTICE OF ENTRY OF THE DEFAULT JUDGMENT TO CITIZENS'S RESIDENT AGENT CONSTITUTED AN IRREGULARITY FOR PURPOSES OF RULE 2-535(B).

As an alternative ground for vacating the judgment, the circuit court held that the clerk's mailing the notice of entry of judgment to CSC, rather than to Ms. Eastman, constituted an irregularity. Premier counters that Citizens was not entitled to receive notice

at all, but even if it were, mailing the notice to CSC was proper. We conclude that the circuit court erred in finding that mailing notice to CSC was an irregularity.

An "irregularity" under Rule 2-535(b) means "a failure to follow required process or procedure." *Early v. Early*, 338 Md. 639, 652 (1995); *see also Alban Tractor Co. v. Williford*, 61 Md. App. 71, 79 (1984) (finding that a clerk's failure to send a copy of a final order may be an irregularity allowing the court to revise an enrolled judgment). Irregularities "result[ing] from a failure of process or procedure by the clerk" include "failures to send notice of a default judgment" and failures to "mail a notice to the proper address." *Thacker*, 146 Md. App. at 219-20; *see also Md. Lumber Co. v. Savoy Constr. Co., Inc.*, 286 Md. 98, 103 (1979) (finding an irregularity where the clerk never sent notice of entry of a default judgment). An irregularity must be shown by clear and convincing evidence considering "the totality of the circumstances." *Thacker*, 146 Md. App. at 219.

Rule 1-324(a) establishes the procedure for a court clerk to send notifications of judgments. The rule requires the clerk to send a copy of such an order "to all parties entitled to service under Rule 1-321." Rule 1-321(a) in turn requires that service of "every pleading and other paper filed after the original pleading" be made "upon each of the parties. . . . Service upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address."

Citizens contends that the clerk failed to follow this Rule because the most recent address in the court's file for Citizens was Ms. Eastman's address, which Premier had identified on its affidavit of service of the order to show cause, filed August 9. However,

Ms. Eastman's address was neither provided by Citizens nor was it, from the clerk's perspective, the "last known address" for Citizens. We conclude that, from the perspective of the clerk, the last known address for Citizens was the only address of which the court received formal notice: CSC's address. We reject Citizens's contention that it was an irregularity for purposes of Rule 2-535(b) for the clerk not to have reviewed affidavits and certificates of service filed by other parties to determine whether the only official address ever provided for Citizens might be called into question. If the intent of the Rule were to require the clerk to use whatever the last address is in the file regardless of its source, the Rule could say that. Instead, the Rule requires the clerk to use the most recent address in the file only if provided by the party itself. Requiring otherwise would both impose a significant burden on clerks and presumably give rise to potential confusion if different filings from different parties state different addresses.

Estime v. King, 196 Md. App. 296 (2010), is not to the contrary. There, the clerk failed to use an address that had been provided in a certificate of compliance filed by the party whose address was at issue. That was an irregularity because it violated the express requirement of the Rule. *Id.* at 306. We held similarly in *Gruss v. Gruss*, 123 Md. App. 311 (1998), where a litigant updated her own address in a pleading. Neither of these cases stands for the proposition that the clerk is obligated to scan the filings of *other* parties to determine if the party's address has changed. To the contrary, we confirmed in *Estime* that a party "ha[s] a continuing obligation to furnish the court with [his or her] most recent address." 196 Md. App. at 306 (quoting *Gruss*, 123 Md. App. at 320); *see also Smith-Myers Corp. v. Sherill*, 209 Md. App. 494, 506 (2013) (in the context of mailing a notice

of an order of default, determining that "[i]t is the duty of a party, not the court, to ensure that the court has the parties' current and correct mailing address").

Here, although it was aware of the litigation no later than early June, Citizens first provided the court with an address for service on September 16. Citizens thus "failed to fulfill its obligation to furnish its correct address to the court." *Id.* at 516; *see also Estime*, 196 Md. App. at 304 ("It is the responsibility of attorneys . . . to monitor dockets for when pleadings and other documents are filed."); *Henderson v. Jackson*, 77 Md. App. 393, 397 n.6 (1988) (observing that "counsel is responsible for the contents of the court file"). We decline to impose an "unreasonable burden" on the clerk so as to "requir[e] [him or her] to sift through all . . . papers in search of an indication that a party's mailing address has changed." *Smith-Myers Corp.*, 209 Md. App. at 516.

III. CITIZENS DID NOT ACT WITH ORDINARY DILIGENCE AND IN GOOD FAITH.

Finally, even if Citizens had otherwise proven fraud or an irregularity for purposes of Rule 2-535(b), which it has not, it still could not prevail because it is clear on this record that it did not act "with ordinary diligence and in good faith upon a meritorious cause of action or defense." *Platt*, 302 Md. at 13.

Citizens argues that it acted diligently because it moved to vacate the default judgment only two days past the 30-day deadline. We have held that "[o]rdinary diligence includes moving to vacate a judgment 'as soon as' a party learns of the judgment and investigates the facts." *Bland v. Hammond*, 177 Md. App. 340, 357 (2007) (quoting *Fleisher*, 60 Md. App. at 573). However, "the nature and extent of [the movant's] actual

knowledge is relevant to the issue of whether [the movant] acted with ordinary diligence in pursuing its motion[] to vacate." *City of College Park*, 150 Md. App. at 274.

Here, it is undisputed that Citizens became aware of the litigation, and of the fact that its response was already months overdue, in early June. For more than two months, it failed to undertake sufficient efforts to make itself aware of what papers had been filed or to protect its interests by engaging counsel to enter an appearance on its behalf. Then, even though its in-house counsel realized no later than August 5 that it needed to retain counsel "immediately," Citizens still waited more than 40 additional days before having counsel enter an appearance in the case. This inexplicable inaction cannot meet any definition of ordinary diligence in defending a case. *See Wooddy v. Wooddy*, 256 Md. 440, 453 (1970) ("The negligence or mistakes of the agents and counsel of the complaining party[] are not sufficient to justify a court in striking out an enrolled judgment or decree.").

We reverse the judgment of the circuit court and remand for the court to reinstate the default judgment originally entered in favor of Premier.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. CASE REMANDED FOR REINSTATEMENT OF DEFAULT JUDGMENT. COSTS TO BE PAID BY APPELLEE.