

Circuit Court for Montgomery County
Case No. 394103-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 57

September Term, 2019

DJIMI SALAMI et al.

v.

KODJO SOBO, et al.

Kehoe,
Reed,
Kenney, James A., III
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: June 26, 2020

*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. *See* Md. Rule 1-104.

Djimi Salami and Tadouni Lawani, the personal representative of the estate of Soule Lawani, appeal from a judgment of the Circuit Court for Montgomery County, the Honorable Anne K. Albright, presiding, that denied several related motions, including their motions to revise a judgment entered in a wrongful-death action. Appellants raise four issues on appeal, which we have consolidated, reordered, and reworded for purposes of analysis:

1. Did the circuit court err when it denied appellants' motion to vacate a judgment in a wrongful-death action on the basis of fraud, mistake or irregularity?
2. Did the court err in denying appellants' motions with regard to the portion of the judgment entered in favor of the decedent's minor children?
3. Did the court err when it denied appellants' motion for sanctions against Sobo and his counsel in the wrongful-death action?¹

¹ In their brief, appellants frame the issues as follows (formatting altered):

1. Did the court err in not vacating the wrongful death judgment awarded to appellants' minor children, because neither child opposed appellants' motion?
2. Did the court improperly deny appellants' motion to vacate the \$2,006,250 judgment entered in the wrongful death case as a remedy for appellee Sobo's failure to comply with Maryland Rule 15-1001(d)'s service requirements on appellants and/or on the grounds of fraud, mistake, or irregularity pursuant to Maryland Rule 2-535(b), regardless of whether or not appellants' wrongful death claims are time barred[?]
3. Did the trial court improperly deny appellants' motion to intervene in the re-opened wrongful death case?
4. Did the trial court improperly deny as moot appellants' auxiliary request to schedule a hearing to determine the amount of Maryland Rule 1-341 monetary sanctions that should be imposed against appellee Sobo and his attorney for their bad faith litigation tactics?

Because we answer no to the first and third questions and appellants have waived the second, we will affirm the circuit court’s judgment.

Background

The Wrongful-Death Action

On April 15, 2013, Sadatou Lawani (the “decedent”) died as the result of a medical condition. At the time, she was a resident of Lanham, Maryland. The decedent was survived by her husband, Kodjo Sobo; her two minor children; and her mother and father, Djimi Salami and Soule Lawani (“D. Salami,” “S. Lawani,” and, collectively, the “use plaintiffs”). At the time of the decedent’s death, the use plaintiffs resided in the Togolese Republic in West Africa. The decedent was also survived by at least one sibling, her sister Masura Salami, who was living in the United States at the time of the decedent’s death.

On August 11, 2014, Sobo, individually, as personal representative of decedent’s estate, and as parent and next friend of the minor children, filed a civil action asserting wrong-death and survivorship claims based against Vincent D. Hayes, M.D., and Emergency Medicine Associates, P.A. (collectively, “Medicine Associates”). The complaint alleged medical malpractice. Sobo was represented by an experienced Maryland litigation law firm (“the law firm”).

Sobo’s complaint identified D. Salami and S. Lawani as “use plaintiffs,” that is, parties who had a right to intervene in the wrongful-death action as additional plaintiffs. *See Carter v. Wallace & Gale Asbestos Settlement Trust*, 439 Md. 333, 336 n.1 (2014). Md. Rule 15-1001(c) requires a plaintiff in a wrongful-death action to undertake a good-faith and

reasonably diligent effort to identify and locate use plaintiffs. The complaint alleged that the mailing address of the use plaintiffs was post office box 8321 in Lomé, the capital of the Togolese Republic. Section (d) of the same rule requires the plaintiff in a wrongful-death action to “serve a copy of the complaint on each use plaintiff pursuant to Rule 2-121,” together with a notice informing the use plaintiffs of their right to intervene in the action as additional plaintiffs. On August 15, 2014, the clerk’s office sent a notice regarding the lawsuit’s case number to the parties and the use plaintiffs. The notices to D. Salami and S. Lawani were mailed to the Lomé post office box and were returned as undeliverable on January 7, 2015.

On September 14, 2014, the law firm sent a copy of the complaint and the Md. Rule 15-1001 notices to D. Salami and S. Lawani to post office box 8321 in Lomé by International FedEx. The law firm did so without first seeking the approval of the circuit court, which, as we will later explain, was required by Md. Rules 15-1001 and 2-121(a). On September 18, FedEx notified the law firm that the package had been delivered to the post office box and that it had been “signed for by SOBODEDE.” The law firm made no further attempt to effect service on the use plaintiffs.

The action proceeded to trial, and the jury found Medicine Associates liable for the decedent’s death. The jury awarded no damages on the survivorship claim but substantial damages to Sobo and the minor children on the wrongful-death claim. The court eventually entered judgment on their behalf in the amount of \$1,100,000 in economic damages and \$906,250 in noneconomic damages. The damages were allocated between Sobo and the

minor children according the jury's verdict. Medicine Associates paid the judgment in full and an order of satisfaction was filed on February 22, 2017.

The Use Plaintiffs' Motions

On October 16, 2018—about five and a half years after decedent's death and twenty months after the order of satisfaction was filed—D. Salami filed a motion to vacate the judgment in the wrongful-death case on the basis of fraud, mistake, or irregularity; a motion to intervene; and, a bit later, a Md. Rule 1-341 motion for sanctions against Sobo and the law firm. By this point, the decedent's father, S. Lawani, had also passed away. Soon thereafter, the personal representative of S. Lawani's estate, Tadouni Lawani ("T. Lawani"), filed motions substantively identical to those filed by the D. Salami.

The factual basis for these motions was presented in affidavits signed by D. Salami; Masura Salami, sister of the decedent and daughter of the use plaintiffs; T. Lawani; and appellants' current legal counsel. The substance of the relevant parts of these affidavits can be summarized as follows:

- (1) D. Salami is a resident citizen of the Togolese Republic in West Africa. She is fluent in French and two West African languages, Ewe and Yoruba. (The affidavits do not address whether D. Salami speaks English.)
- (2) Post office box 8321 in Lomé was not and never had been the mailing address of either D. Salami or S. Lawani. At all relevant times, the post office box was used by a West African nongovernmental organization that had no affiliation or

connection with either use plaintiff. D. Salami and S. Lawani never had a post office box in Lomé.

- (3) “SOBODEDE,” the individual who signed the FedEx receipt was, in fact, Dede Sobo, Sobo’s sister. Ms. Sobo did not inform D. Salami or S. Lawani of the FedEx package or its contents.
- (4) Sobo was in close personal contact with members of the use plaintiffs’ family before the wrongful-death action was filed and while the case was pending. Specifically, Masura Salami, the decedent’s sister, lived in Sobo’s home from May 2013 (about a month after her sister’s death) through August 2016 (about two years after the wrongful-death action was filed) to assist in caring for the minor children. Sobo had no communications with her throughout this time or at any time regarding the wrongful-death action or the whereabouts of her parents. D. Salami also resided in Sobo’s home in order to help raise the minor children from June to November 2015. During that time, Sobo never informed her about the wrongful-death action.
- (5) Additionally, Sobo took at least one affirmative step to conceal the fact that there was a wrongful-death case by directing the circuit court’s clerk’s office to send correspondence regarding the lawsuit to a postal box instead of his home. This occurred during the time that Masura Salami was living in Sobo’s home and shortly after judgment was entered.

(6) D. Salami first learned about the wrongful-death action in March 2018, when a family member, conducting research on the history of their family, came across an article on the law firm’s website discussing the successful wrongful-death action.

(7) D. Salami confronted Sobo about the wrongful-death action while he was visiting the Togolese Republic in June and July of 2018. In a Togolese court proceeding unrelated to this case, the subject of the wrongful-death action was raised and Sobo at first denied its existence. It was only when he was confronted with the printout of the law firm’s article that Sobo admitted that he had filed a wrongful-death action and obtained a \$2 million judgment.

These allegations, none of which were contested by Sobo or Medicine Associates, formed the factual basis of appellants’ contention that the judgment in the wrongful-death action was tainted by fraud. Additionally, appellants argued that the fraud tolled the running of the relevant limitations period until such time as they discovered that Sobo had filed a wrongful-death action, which, they stated, occurred in late March 2018. Their mistake and irregularity arguments were based largely upon what the law firm did and did not do in connection with its attempt to serve the requisite notice on the use plaintiffs. We will discuss this issue later.

Both Sobo and Medicine Associates filed oppositions to the motions.

Proceedings in the Circuit Court

The circuit court held a hearing on the motions and responses on February 19, 2019. During the hearing, the court asked appellants’ counsel about the remedy to be applied if

the court were to grant the relief appellants requested. In response, counsel stated that “part of this [situation] is the fault of Dr. Hayes”; the only issue before the court would be damages, and not the liability of Medicine Associates; and a jury would determine the total damages and allocate the amount of damages to each plaintiff, with Medicine Associates being given a credit for the money paid to satisfy the prior judgment. Otherwise, the arguments presented to the circuit court by the parties were essentially the same as those presented on appeal.

At the conclusion of the hearing, the circuit court stated that it viewed the “essence” of appellants’ argument to be that Sobo had “d[one] things or failed to do things which together amount[ed] to fraud on his part” and that this fraud was a basis to vacate the court’s judgment under Md. Rule 2-535 and, “in essence, to . . . partially start over with this case.” The circuit court was unconvinced by this argument.²

As an alternative basis for its decision, the court concluded that the three-year limitations period of Md. Code, § 3-904(g)(1) of the Courts Article (“Cts. & Jud. Proc.”), barred appellants from now asserting their claims in the wrongful-death suit. In the court’s view, the three-year limitations period ran from the time of the decedent’s death. Then, the court looked to Md. Rule 15-1001(e)(2) and observed that it provides that a person may not participate in or claim a recovery in the wrongful-death suit if the person fails to file a

² The circuit court did not explicitly address appellants’ arguments that the judgment in the wrongful-death case should be set aside on the grounds of mistake or irregularity.

complaint or motion to intervene within the three-year statutory deadline. In support of its ruling, the court relied on *Carter*, 439 Md. 333, which we will discuss, together with other relevant case law, later in our analysis.

The court also disagreed with appellants’ argument that the limitations period for their wrongful-death claim was tolled by Cts. & Jud. Proc. § 5-203.³ It stated that statutes of limitations are tolled when “the defendant’s fraud keeps you from knowing whether you should have had a cause of action.” Applying that standard to appellants’ case, the court ruled that because neither Sobo nor Dr. Hayes hid the fact of the decedent’s death from appellants, there was nothing to toll the limitations period.

Finally, the court found that Sobo and the law firm did not act in bad faith and denied appellants’ motion for sanctions. On February 27, 2019, the court entered a written order denying all motions.

The Standard of Review

We review a circuit court’s decision to grant or deny a Rule 2-535(b) motion to revise a judgment for an abuse of discretion. *Powell v. Breslin*, 430 Md. 52, 62 (2013). We apply the same standard of review to a court’s decision to deny a motion to intervene because it was untimely filed. *Doe v. Alternative Medicine Maryland, LLC*, 455 Md. 377, 414 (2017).

³ Cts. & Jud. Proc. § 5-203 states:

If the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud.

“A court can abuse its discretion when it makes a decision based on an incorrect legal premise or upon factual conclusions that are clearly erroneous.” *In re Adoption/Guardianship of Ta’Niya C.*, 417 Md. 90, 100 (2010). Appellate courts review factual findings for clear error. *Id.* We exercise *de novo* review over a circuit court’s legal conclusions. *Simbaina v. Bunay*, 221 Md. App. 440, 448 (2015). Finally, a court can also abuse its discretion where “no reasonable person would take the view adopted by the trial court or the trial court acts without any guiding rules or principles. *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 96 (2013), *aff’d*, 437 Md. 47 (2014).

Analysis

Although we view some of the discrete parts of this case a bit differently than did the circuit court, we agree with its ultimate conclusions. At play in this appeal are three principles that emerge from the pertinent statutes, rules and caselaw. The first is that Maryland’s wrongful-death statute permits only one action against a defendant. The second is that, subject to a limited number of exceptions, a wrongful-death claim must be asserted within three years of the decedent’s death. The third is that the actual plaintiffs in a wrongful-death action must undertake “a reasonable and good faith effort”⁴ to identify and locate use plaintiffs and then to serve them with notice of the pending action.

In our view, appellants established that Sobo’s efforts to locate the use plaintiffs were anything but reasonable and in good faith. Also, as we will explain, there were significant

⁴ See Md. Rule 15-1001(c).

problems with the law firm’s efforts to serve the use plaintiffs. If any of this conduct were attributable to Medicine Associates, we might conclude that the judgment entered in the wrongful-death action was tainted by fraud and irregularity. However, we agree with the circuit court that misconduct and errors by Sobo and his lawyers are not a basis to revise the judgment over Medicine Associates’ objection. To the extent that there is doubt about this—and we concede that we are not aware of a reported opinion in a Rule 2-535(b) case that provides specific guidance on this issue—the circuit court did not err in concluding that the motions to revise the judgment were time-barred. Nothing occurred in this case that would toll the running of the limitations period. Finally, we conclude that the circuit court did not err in denying the motion for sanctions.

Our analysis begins with summaries of Maryland’s wrongful-death statute, especially Cts. & Jud. Proc. § 9-304, and the relevant rules, particularly Md. Rules 15-1001 and 2-535(b). Next, we will take judicial notice of some facts regarding the Togolese Republic that will help put the parties’ irregularity contentions into better focus. Finally, we will address the parties’ substantive arguments.

1. Maryland’s Wrongful-Death Statute

Maryland’s wrongful-death statute, codified at Cts. & Jud. Proc. §§ 3-901 to -904, “allows the decedent’s beneficiaries or relatives to recover damages for loss of support or other benefits that would have been provided, had the decedent not died as a result of another’s negligence.” *Spangler v. McQuitty*, 449 Md. 33, 53 (2016). “[T]he purpose of the act [is] to compensate the families of the decedents, as opposed to the estates of the

decedents.” *Mummert v. Alizadeh*, 435 Md. 207, 219 (2013). Subject to exceptions that are not relevant to this appeal, wrongful-death actions may be filed by the spouse, the parents, or the children of the decedent. Cts. & Jud. Proc. § 9-304(a). Damages are divided among the spouse, parent, and child “in shares directed by the verdict.” Cts. & Jud. Proc. § 3-904(c).

Critical to the issues raised in this appeal, the wrongful-death statute imposes a time limit for possible plaintiffs to bring a wrongful-death action. Cts. & Jud. Proc. § 3-904(g)(1) states, in pertinent part, that “an action under this subtitle shall be filed within three years after the death of the injured person.” With certain exceptions that we will discuss later, the three-year period for a wrongful-death action begins to run at the time of the decedent’s death. *Geisz v. Greater Baltimore Medical Center*, 313 Md. 301, 322 (1988). Further, the statute mandates that “[o]nly one action under this subtitle lies in respect to the death of a person.” Cts. & Jud. Proc. § 3-904(f). It is important to note that the three-year deadline in § 3-904(f) establishes a condition precedent to filing the action. As the Court of Appeals has explained:

Since at least *State, w/o Stasciewicz v. Parks*, 148 Md. 477, 479–82 (1925), this Court has construed the time limit in the wrongful death statute to be a substantive provision, that is, a condition precedent to asserting the statutorily created cause of action. A plaintiff who does not assert the cause of action within the statutorily prescribed time, now three years, loses the right to sue a defendant who is not estopped to assert the defense.

University of Maryland Medical System v. Muti, 426 Md. 358, 370–71 (2012) (cleaned up).

There are exceptions to this rule. One is that Cts. & Jud. Proc. § 5-201 tolls the running of the three-year limitations period during the minority of a potential plaintiff. *Parker v. Hamilton*, 453 Md. 127, 134 (2017). And, as the passage from *Muti* indicates, there are cases in which a defendant will be estopped from asserting that the wrongful-death claim has not been timely filed. To date, the Court of Appeals has identified two scenarios that can be the basis for application of the doctrine of estoppel. *See Parker*, 453 Md. at 139–40; *Geisz*, 313 Md. 311, 333–34. We will discuss these decisions later.

Because only one wrongful-death action can be filed regardless of the number of persons who may file such an action, considerations of fairness dictate that notice of the filing of the actions should be given to all potential plaintiffs. In 1962, the Court of Appeals adopted rules requiring plaintiffs to identify and name as plaintiffs “all persons who are or may be entitled to damages . . . whether or not they joined in bringing the action.” *Muti*, 426 Md. at 369–70. If any of those plaintiffs did not join in bringing the action, their names were to be “preceded by the words: ‘to the use of’” *Id.* at 370. Additionally, the plaintiff was required to include “the names and last known addresses of all persons who are or may be entitled by law to recover damages and their relationship” to the decedent. *Id.* In the intervening years, these rules have been consolidated as Md. Rule 15-1001. We will summarize that rule’s pertinent provisions.

First, Md. Rule 15-1001(b) requires that the complaint name all persons who may be entitled to claim damages as a result of the decedent’s death. If such persons are not plaintiffs, then they are to be identified as “use plaintiffs.”

Second, Md. Rule 15-1001(c) requires a complaint in a wrongful-death action to provide the last known address of each use plaintiff and to affirmatively assert that the party bringing the action has “conducted a good faith and reasonably diligent effort” to locate all use plaintiffs.

Third, Md. Rule 15-1001(d) requires the party bringing the action to serve a copy of the complaint, as well as a notice explaining a use plaintiff’s right to intervene in a wrongful-death action, to all named use plaintiffs “pursuant to Rule 2-121.” A use plaintiff who is served with a copy of the complaint and the notice has the right to intervene in the wrongful-death action within a period of time varying between thirty days (for residents of Maryland) and ninety days (for use plaintiffs who reside outside the United States).

Finally, Md. Rule 15-1001(e) of the rule sets out circumstances in which a use plaintiff can waive his or her right to participate in the action. Subsection (e)(2) states that a use plaintiff who fails to file a motion to intervene “by the statutory deadline may not participate in the action or claim a recovery.” The “statutory deadline” is the three-year statute of limitations set out in Cts. & Jud. Proc. § 3-904(g) (which we have discussed) and Cts. & Jud. Proc. § 5-101. Consistent with subsection (e), Rule 15-1001(f) states that a use plaintiff who was not identified in the complaint but who is identified within the three-year statutory deadline “shall be added by amendment to the complaint as soon as practicable and served in accordance with section (d) of this Rule and Rule 2-341.” The latter rule pertains to the amendment of pleadings.

2. Md. Rule 2-535(b)

Md. Rule 2-535(b) states 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.” For the purposes of the rule, “fraud,” “mistake” and “irregularity” are terms of art that are “narrowly defined and are to be strictly applied.” *Early v. Early*, 338 Md. 639, 652 (1995).

In the context of the rule, “[t]o establish fraud . . . a movant must show extrinsic fraud, not intrinsic fraud.” *Pelletier v. Burson*, 213 Md. App. 284, 290–91 (2013) (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008)). “Fraud is extrinsic when it actually prevents an adversarial trial but is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud.” *Id.* at 291.

In this context, “mistake” refers “only to a jurisdictional mistake.” *Peay v. Barnett*, 236 Md. App. 306, 322 (2018) (cleaned up). The Court of Appeals has explained that “the typical kind of mistake occurs when a judgment has been entered in the absence of valid service of process; hence the court never obtains personal jurisdiction over a party.” *Chapman v. Kamara*, 356 Md. 426, 436 (1999) (cleaned up).

Finally, an “irregularity” under Md. Rule 2-535(b) is “a failure to follow required process or procedure. . . . usually in the context of a failure to provide required notice to a party.” *Mercy Medical Center v. United Healthcare of the Mid-Atlantic*, 149 Md. App. 336, 375 (2003) (cleaned up).

3. The Parties' Contentions

Appellants argue that the circuit court erred by not vacating the judgment in the wrongful-death action pursuant to Md. Rule 2-535(b). They maintain that there was undisputed evidence of fraud, mistake, and irregularity on the part of Sobo and/or the law firm.

As to fraud, appellants assert that Sobo's conduct amounted to extrinsic fraud. They point to the facts that Sobo provided an incorrect post-office-box address belonging to an NGO as the mailing address for the use plaintiffs, which caused the law firm to send notice of the complaint to the same post office box address; that Sobo had his sister Dede sign for the package; that Dede Sobo failed to deliver the package to either of the use plaintiffs; that Sobo failed to tell D. Salami about the wrongful-death action during the six-month period in which she lived with Sobo while the wrongful-death action was pending; that Sobo failed to ask Masura Salami about her parents' addresses; and that Sobo changed his address after receiving a judgment so that the decedent's sister, who lived with him at that time, would remain unaware of the lawsuit.

As to mistake, appellants contend that Sobo's purposeful failure to serve them with a copy of the wrongful-death complaint constituted a "defect" or "mistake of jurisdiction" because appellants were necessary parties to that action. *See Ace American Ins. Co. v. Williams*, 418 Md. 400, 423 (2011).

As to irregularity, appellants contend that Sobo never filed an affidavit of service indicating that appellants had been served with the wrongful-death complaint, as required by Md. Rule 2-126(a).

Appellants recognize that in order to assert their claims in the wrongful-death action, they must overcome the hurdle of the three-year limitations period set by Cts. & Jud. Proc. § 3-904(g)(1), which began to run on April 15, 2013, when the decedent died. *See* Md. Rule 15-1001(e)(2). Appellants argue that their claims are not barred by the three-year statute of limitations, however, because Cts. & Jud. Proc. § 5-203 applies to toll the limitations period. That statute provides that “[i]f the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud.” Cts. & Jud. Proc. § 5-203.

Appellants correctly point out that the Court of Appeals has held that Cts. & Jud. Proc. § 5-203 applies to wrongful-death lawsuits. They direct us in particular to the Court’s statement in *Geisz v. Greater Baltimore Medical Center*, 313 Md. 301 (1988), that “[t]he principle underlying the statute is that it would be ‘contrary to the principles of justice, to permit one practicing a fraud and then concealing it, to plead the statute, when, in fact, the injured party did not know and could not with reasonable diligence have discovered the fraud.’” *Id.* at 324–25 (quoting *Franklins v. Waters*, 8 Gill 322 (1849)).

As to the sanctions issue, appellants argue that, given the “totality of the circumstances”—Sobo’s misconduct coupled with the failure to properly serve

appellants—we should vacate the decisions of the circuit court denying their motions and remand the case to that court for further proceedings.

For his part, Sobo argues that there was no fraud, mistake or irregularity and that appellants’ post-judgment motions were not timely filed. Sobo also points out that appellants do not deny that they were aware of their daughter’s death soon after it occurred, and that knowledge of her death put them on inquiry notice that her death may have been caused by malpractice or another tortious act. Medicine Associates makes similar arguments and also asserts that *Geisz* is not controlling.

4. Judicial Notice

Courts, including appellate courts, may take judicial notice of adjudicative facts that are “not subject to reasonable dispute in that [they are] . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Md. Rule 5-501(b). We will take judicial notice of the following facts pertaining to the Togolese Republic based upon easily accessible sources that satisfy the Md. Rule 5-501(b)(2) criteria.

The Togolese Republic is a small country located in West Africa. Its official language for the purposes of law and commerce is French,⁵ but West African languages, including Ewe, are widely spoken by its citizens.⁶ It has a judicial system that consists of a supreme

⁵ See *Africa: Togo*, CIA: World Factbook, <https://www.cia.gov/library/publications/the-world-factbook/geos/to.html> (last visited March 16, 2020).

⁶ *Id.*

court, other appellate courts, and trial courts, termed “courts of assizes.”⁷ Togo maintains diplomatic relations with the United States.⁸ There is an American embassy in Lomé,⁹ which maintains a list of local attorneys who are equipped to advise English-speaking clients.¹⁰ Togo is not a party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Service Convention”).^{11, 12}

Finally, Togo is a member of the Universal Postal Union, an agency of the United Nations that coordinates international mail delivery.¹³ At the hearing before the circuit court, the law firm asserted, without citation to anything, that there was no mail service between the United States and the Togolese Republic. Whatever the case might have been

⁷ *Id.*

⁸ *Id.*

⁹ U.S. Dep’t of State: U.S. Embassy in Togo, <https://tg.usembassy.gov/> (last visited March 17, 2020).

¹⁰ *Lawyers’ List*, U.S. Dep’t of State: U.S. Embassy in Togo (2018), <https://tg.usembassy.gov/wp-content/uploads/sites/220/LAWYERS-LIST-ENGLISH-DEC-2018.pdf>.

¹¹ *Togo Judicial Assistance information*, U.S. Dep’t of State: Bureau of Consular Affairs, <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/Togo.html> (last updated March 30, 2018).

¹² The Hague Service Convention was ratified by the United States in 1967 and became effective on February 10, 1969. *See* 20 U.S.T. 361.

¹³ *Member Countries*, Universal Postal Union, <http://www.upu.int/en/the-upu/member-countries.html> (last visited March 17, 2020).

in 2014, that statement is no longer correct, although postal service appears to be limited to certain cities, including Lomé.¹⁴

5. Md. Rule 2-535(b): Fraud, Mistake and Irregularity

Fraud

We agree with appellants that the undisputed evidence before the circuit court established fraud on the part of Sobo that had the effect of preventing D. Salami and S. Lawani from learning of the wrongful-death action and their right to intervene in it.

The affidavits and other information before the court, previously summarized, show that although Sobo was in close contact with members of his late wife's family, both before and after the time that the wrongful-death action was filed, he never communicated with them regarding the wrongful-death action; he changed his mailing address for purposes of the wrongful-death action while members of the Lawani family were residing in his residence; he never communicated with them as to their mailing address in Togo; and he provided the law firm with an incorrect mailing address for the Lawani family. Additionally, it is undisputed that Sobo's sister, Dede Sobo, signed for the FedEx package containing a copy of the complaint and the notice required by Rule 15-1001(d) and never gave those documents to either use plaintiff. All of this conduct had the effect of preventing

¹⁴ See U.S. Postal Serv., *Global Express Guaranteed Service Guide* at 1065 (2019), <https://about.usps.com/publications/pub141.pdf> (last visited May 4, 2020).

the use plaintiffs from learning of the existence of the wrongful-death action and their right to participate in it.

Sobo asserts that none of this matters because the use plaintiffs were aware of their daughter's death and were on inquiry notice as to the possibility of a cause of action arising out of that tragic event. But this argument misses the point—the plaintiffs in the wrongful-death action were under an obligation imposed by Rule 15-1001 to make a good faith effort to identify and locate the use plaintiffs and to provide them with the requisite notice of the filing of the lawsuit and their right to join in it. Sobo's conduct prevented the use plaintiffs from joining in the wrongful-death action and thus constituted extrinsic fraud, the kind of fraud that is the basis for revising a judgment per Md. Rule 2-535(b). *See Pelletier*, 213 Md. App. at 290–91 (“Fraud is extrinsic when it actually prevents an adversarial trial” (cleaned up)).

Mistake

We do not agree with appellants' assertion that the judgment in the wrongful-death action was also tainted by mistake. The concept is inapplicable to this case.

“Mistake” in the context of Md. Rule 2-535(b) is limited to a jurisdictional error, typically, when a judgment is entered against a defendant in the absence of valid service of process. *See, e.g., Tandra S. v. Tyrone E.*, 336 Md. 303, 318 (1994); *Peay v. Barnett*, 236 Md. App. 306, 322 (2018); *Boone v. Youngbar*, 234 Md. App. 288, 306 (2017). That the use plaintiffs were not parties to the wrongful-death action was not jurisdictional error.

Irregularity

We agree with the appellants that the judgment in the wrongful-death action was tainted by irregularity.

In the Md. Rule 2-535(b) context, “irregularity” means “a failure to follow required process or procedure . . . usually in the context of a failure to provide required notice to a party.” *Mercy Medical Center v. United Healthcare of the Mid-Atlantic*, 149 Md. App. 336, 375 (2003) (quoting *Radcliff v. Vance*, 360 Md. 277, 292 (2000)). The relevant “process or procedure” is set out in Md. Rule 15-1001(c) and (d), which first requires a plaintiff to conduct a good-faith and reasonably diligent effort to identify and locate use plaintiffs and then requires the plaintiff to serve a copy of the complaint and required notice on those use plaintiffs.

In the present case, responsibility for the good-faith and reasonably diligent inquiry effort was borne by Sobo. And, based on the record before us, his efforts to provide the court with the use plaintiffs’ last known addresses were neither in good faith nor reasonably diligent. While the obligation to serve the use plaintiffs with the complaint and the notice required by Md. Rule 15-1001(d) was ultimately Sobo’s, it was the law firm that undertook this step in the present case. Before the circuit court and in its brief, it was the law firm’s position that its efforts regarding service satisfied the relevant rules and that, in any event,

any failing on its part was irrelevant because of Sobo’s misconduct.¹⁵ The first contention is clearly wrong. There is not enough information in the record for us to assess the second. We explain.

As we have said, Md. Rule 15-1001(d) requires the plaintiff to serve all use plaintiffs with a copy of the complaint as well as a notice advising the use plaintiffs of their right to intervene in the action. Such service is to be effected “in accordance with Rule 2-121.”

That rule sets out four methods for service within or, “when authorized by the law of this State,” outside of Maryland: (1) actual delivery to the person to be served, (2) if the person is an individual, leaving a copy of the court papers at “the individual’s dwelling house or usual place of abode with a resident of suitable age and discretion,” or (3) by certified mail with delivery restricted to the person to be served. If there is no Maryland statute authorizing a particular means of out-of-state service, then the service may be made (4) “in the manner prescribed by the court or prescribed by the foreign jurisdiction if reasonably calculated to give actual notice.” Md. Rule 2-121(a).

The law firm does not point to any law of Maryland that provides for service on foreign nationals in foreign countries. Nor does it cite any statute or law of either the Togolese Republic or this State that authorizes service by FedEx. Therefore, the *only* option to accomplish legally effective service was to first obtain the trial court’s approval of an

¹⁵ At oral argument, the law firm conceded that the efforts to serve the use plaintiffs did not comply with Md. Rule 20121.

alternative method of service as required by Md. Rule 2-121(a). Not only did the law firm not obtain the trial court’s approval of service by delivery of the court papers by FedEx to a post office box, the law firm didn’t even bother to ask for it.

When the issue of proper service arose at the hearing, the circuit court alluded to the Hague Service Convention, which sets out methods for service of court documents issued by a court of a member state within the territorial boundaries of another. But the Togolese Republic is not a signatory to that treaty. In the absence of a treaty or statute, the traditional means of serving process issued by a court in one country on a person in another is by means of a letter rogatory. *In re Grand Jury Subpoena*, 646 F.3d 159, 165 (4th Cir. 2011); *Rosenruist-Gestao E Servicos LDA v. Virgin Enterprises Ltd.*, 511 F.3d 437, 441 (4th Cir. 2007).

A “letter rogatory” is “a formal request from a court in which an action is pending, to a foreign court to perform some judicial act.” 22 C.F.R. § 92.54 (2020); *see also Letters Rogatory*, *Black’s Law Dictionary* (11th ed. 2019) (defining a letter rogatory as a “document issued by one court to a foreign court, requesting that the foreign court . . . serve process on an individual” and to “return proof of process to the requesting court”). Honoring a letter rogatory “rest[s] entirely upon the comity of courts toward each other, and customarily embod[ies] a promise of reciprocity.” 22 C.F.R. § 92.54 (2020). Because of these concerns, the Department of State provides guidance about letters rogatory and to some extent regulates their transmission. *See* COMAR §§ 92.54, 92.66. Moreover, some countries view unauthorized attempts to exercise the power of a foreign court within their

boundaries as affronts to their sovereignty. *See* 4B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1133 (4th ed. 2008).¹⁶

Because Togo is not a party to the Hague Service Convention, how service on the use plaintiffs should have been accomplished in the present case would depend upon Togolese law and practice. First, there is a threshold question: whether Togolese courts would view the act of delivering a copy of the complaint and the notice for informational and notice purposes as service of *process*. In Maryland, technically, it is not.¹⁷ On the other hand, a Togolese court might have focused on the fact that the Maryland Rules require that service of the complaint and the Rule 15-1001(d) notice on use plaintiffs must be accomplished in the same manner used in Maryland for service of process. From that, our Togolese colleagues might very reasonably have concluded that they should do so as well. Moving beyond the threshold, service by mail might, or might not, have been permitted in Togo, or at least permitted in those parts of the country that had mail service. If so, then Togo might, or might not, have distinguished between service by mail delivered through its postal

¹⁶ For example, the State Department advises that it is a criminal offense for lawyers to attempt to serve process in Switzerland in a manner other than as permitted in that country's version of the Hague Service Convention or by letters rogatory. *See Service Process*, U.S. Dep't of State: U.S. Embassy in Switzerland & Lichtenstein, <https://ch.usembassy.gov/u-s-citizen-services/local-resources-of-u-s-citizens/living-in-ch/judicial-information/service-process/> (last visited June 24, 2020).

¹⁷ *See* Md. Rule 1-202(w):

“Process” means any written order issued by a court to secure compliance with its commands or to require action by any person and includes a summons, subpoena, an order of publication, a commission or other writ.

agency and service by delivery through a private entity such as FedEx. Togolese law might, or might not, require a return of service that is under oath. Additionally, Togolese courts might have required that, as a prerequisite to service by any manner, the documents from a court in a non-francophone country be translated into French.¹⁸ Even if Togolese courts are entirely indifferent to all of these matters—a notion that we doubt—what are the requirements and recommendations of our own Department of State?

Our point is that all of these questions, and perhaps others as well, would need to be answered before the circuit court could make an informed decision as to whether to approve service on the use plaintiffs by FedEx delivery to a post office box. Because the law firm disregarded the requirements of Md. Rules 15-1001(d) and 2-121, it prevented the court from exercising its responsibility to ensure that the method of service actually employed was “reasonably calculated to give actual notice.” Md. Rule 2-121(a). And, of course, the method of service unilaterally chosen by the law firm failed to provide any notice whatsoever. For all practical purposes, it was as if the law firm made no attempt at all to notify the use plaintiffs.

In its brief and at oral argument, the law firm argued that any lapse on its part was immaterial. It asserted that it had the right to rely in good faith on Sobo’s representations and that any attempt to effect service would be doomed to fail because Sobo had given the

¹⁸ The copy of the complaint and the Rule 15-1001(d) notice sent by the law firm to the use plaintiffs was in English. No translation was included.

law firm incorrect information regarding the use plaintiffs' address. On the record before us, we do not quarrel with the first proposition but we cannot agree with the second. The law firm's argument is based on the unspoken premise that Togolese law permitted service by private delivery to a post office box. There is no information in the record that supports such a conclusion. Without further characterizing the law firm's—and thus Sobo's—handling of this matter, we conclude that it constituted an irregularity.

The appellants have shown fraud and irregularity on the part of Sobo. But the primary target of appellants' motions to revise was not Sobo but Medicine Associates because they were seeking a new trial on damages. To bridge this gap, appellants assert that responsibility for Sobo's misconduct should be imputed to Medicine Associates because (1) the complaint did not allege Sobo had conducted a good-faith and reasonably diligent effort to locate use plaintiffs as is required by Md. Rule 15-1001(c); (2) the clerk's office's letter to the use plaintiffs was returned as undeliverable; and (3) Sobo failed to file a return of service as required by Md. Rule 2-126. These facts, according to appellants, made Medicine Associates "complicit in Appellee Sobo's fraudulent concealment of the wrongful death lawsuit."

We do not agree. Md. Rule 15-1001(c) imposes a duty upon the plaintiff, not the defendant, to make a good-faith and reasonably diligent effort to identify and locate use plaintiffs. Subsection (d) of the same rule requires the plaintiff, not the defendant, to notify use plaintiffs. Appellants point to nothing in the statute, the rule or Maryland's relevant

case law that suggests that a defendant in a wrongful-death case has a duty to see to it that use plaintiffs receive actual notice. We will not retroactively impose such an obligation.

Because Medicine Associates owed no duty to the use plaintiffs and had no role in the problems that permeated Sobo's purported attempt to provide them with notice, we agree with the circuit court that appellants failed to establish a basis to revise the judgment in the wrongful-death action. We will now turn to the alternative basis for the trial court's decision.

6. Tolling the Limitations Period

Assuming hypothetically that the wrongful-death judgment was tainted by fraud and irregularity sufficient to vacate the judgment, the appellants would still have to show that this fraud and irregularity tolled the three-year limitations period that would otherwise preclude their intervention.

Appellants' argument that the statute of limitations was tolled begins with Cts. & Jud. Proc. § 5-203, which states that “[i]f the knowledge of a cause of action is kept from a party by the fraud of an adverse party, the cause of action shall be deemed to accrue at the time when the party discovered, or by the exercise of ordinary diligence should have discovered the fraud.”

The Court of Appeals has twice addressed how Cts. & Jud. Proc. § 5-203 applies in wrongful-death actions. *See Parker v. Hamilton*, 453 Md. 127 (2017); *Geisz v. Greater Baltimore Medical Center*, 313 Md. 301 (1988). Our analysis begins with these opinions.

In *Geisz*, the Court of Appeals held that the tolling provisions of Cts. & Jud. Proc. § 5-203 apply to the fraudulent concealing of an accrual of a wrongful-death claim. 313 Md. at 305. The decedent died of Hodgkin's disease in September 1975, and was survived by his minor son and his former wife. *Id.* Decedent began treatment for this disease in November 1971 at Greater Baltimore Medical Center (GMBC) under the care of a Dr. Richards. *Id.* Decedent continued his treatment there until November 1973, when Richards determined that the conventional methods of treatment were not working and referred the decedent to a program for patients with end-stage Hodgkin's Disease. *Id.* at 306. During this period, Richards had repeatedly assured the decedent and Ms. Geisz that the decedent was receiving excellent care with state-of-the-art medical techniques. *Id.* at 309. In fact, however, Richards knew that the radiation medicine department at GMBC was both understaffed and underequipped and that it was impossible to tell from the records kept by technicians whether patients were receiving adequate dosages of radiation. *Id.* at 332–33.

In 1985, after reading a newspaper article concerning malpractice actions against Richards, Ms. Geisz as personal representative of Mr. Geisz's estate and on behalf of Mr. Geisz's minor child, brought wrongful-death and survival claims against Richards and GBMC. *Id.* The defendants moved for summary judgment on the ground that plaintiffs' claims were time-barred by the three-year limitations period set forth in Cts. & Jud. Proc. § 3-904(g). *Id.* at 307. Plaintiffs contended that their claim was timely because fraud kept them in ignorance of the cause of action; namely, that Richards made representations to Elaine that kept her ignorant of the true facts as to the cause of Mr. Geisz's death. *Id.* at

308. For this assertion, plaintiffs relied on Cts. & Jud. Proc. § 5-203. Defendants responded that plaintiffs had knowledge of the cause of action no later than November 1973 when decedent stopped receiving treatment from Richards. *Id.*

The circuit court agreed with defendants and entered summary judgment in their favor, reasoning that the wrongful-death claim accrued at the time of death. *Id.* It also ruled that plaintiffs failed to show facts that would permit a finding of fraud to toll the accrual date. *Id.* This Court affirmed. *Id.*

The Court of Appeals reversed our decision. In its opinion, the Court held first that plaintiffs did not fail, as a matter of law, to exercise due diligence. *Id.* at 314. The Court concluded that the issue of plaintiffs' diligence in discovering the cause of action was a jury question and that "[a] jury could conclude that the circumstances known to [plaintiffs] would not cause reasonable persons in their position to undertake an investigation which, if pursued with reasonable diligence, would have led to knowledge of the alleged malpractice more than three years before the survival claim was asserted." *Id.* at 317.

Next, the Court addressed Cts. & Jud. Proc. § 5-203. After examining the statute's legislative history, the Court concluded:

[Cts. & Jud. Proc. § 5-203]'s purpose was to authorize at law a specific application of the equitable principles of estoppel. Just as an estoppel based on assurances of payment operated to toll the substantive limitations period involved in *Chandlee* [*v. Shockley*, 219 Md. 493 (1959)], so an estoppel based on fraud or fraudulent concealment of the cause of action operates to toll the substantive limitations period in the wrongful death statute, [Cts. & Jud. Proc.] § 3-904(g).

Id. at 325.

Next, the Court considered whether the record generated a factual issue as to whether fraud by Richards kept plaintiffs in ignorance of the wrongful-death claim. *Id.* at 325. The Court concluded that fraud may be found where a defendant makes representations that are untrue and made with a reckless disregard for their truth. *Geisz*, 313 Md. at 331. Applying that principle to the facts before it, the Court of Appeals noted that the plaintiffs “will be able to present evidence at trial that it was impossible for Dr. Richards to determine whether the desired treatment had actually been received. If believed, that evidence could support a finding of reckless indifference to the truth. With that, the Court reversed this Court’s decision and remanded for further proceedings to determine if Richards made representations that were so recklessly false as to amount to fraud, thereby tolling the accrual date for plaintiffs’ wrongful-death claim. *Id.* at 334.

In *Parker*, the Court applied the teachings of *Geisz* in a different context. In 2009, William Hamilton murdered Craig Parker and buried his body on his farm to conceal the crime. 453 Md. at 130. Eventually, the crime was discovered and, in 2015, Parker’s mother, on her behalf and on behalf of Parker’s minor child, brought wrongful-death and survival claims against Hamilton. *Id.* The trial court dismissed the wrongful-death claim on the basis that it was untimely filed. *Id.* at 131. Among the issues before the Court of Appeals was whether the allegations in the amended complaint were sufficient to establish fraud for the purposes of tolling the statute of limitations under Cts. & Jud. Proc. § 5-203. The Court concluded that the allegations in the complaint, namely, that Hamilton murdered Parker and buried him to conceal the crime, were sufficient. *Id.* at 139–40.

Parker is of no assistance to appellants because they were aware of their daughter's death soon after it occurred. The problem with *Geisz* from appellants' perspective is that the Court made it clear that the purpose of § 5-203 was to permit plaintiffs to argue that defendants should be estopped from presenting a limitations defense when the basis of the estoppel was fraudulent conduct by the *defendant*. In the present case, no one asserts that Medicine Associates did anything fraudulent to conceal the fact that decedent died or that her death was due to its negligence. Appellants argue that we should extend *Geisz* to include a plaintiff's fraudulent concealment of the filing of a wrongful-death action from the use plaintiffs. We decline to do so because doing so would be inconsistent with the language of the statute as well as decisions of the Court of Appeals interpreting and applying it.

Section 5-203 states that a statute of limitations is tolled if “the knowledge of a cause of action is kept from a party by the fraud of an *adverse party*.” (emphasis added). Decisions of the Court of Appeals indicate that, in the context of Cts. & Jud. Proc. § 5-203, the term “adverse party” means “defendant.” *See, e.g., Windesheim v. Larocca*, 443 Md. 312, 335 (2015) (“Maryland law recognizes that it is unfair to impart knowledge of a tort when a potential plaintiff is unable to discover the existence of the claim due to fraud or concealment on the part of the defendant.” (quoting *Dual Inc. v. Lockheed Martin Corp.*, 383 Md. 151, 170 (2004))); *Frederick Road Limited P'ship v. Brown & Sturm*, 360 Md. 76, 98–99 (2000) (Cts. & Jud. Proc. § 5-203 “was passed by the General Assembly for the purpose of enabling the plaintiff in an action at law to set up the fraud of the defendant in

order to avoid a plea of limitations.” (citing *Herring v. Offutt*, 266 Md. 593, 599 (1972); *Piper v. Jenkins*, 207 Md. 308, 315 (1955))).

Appellants argue that the interests of use plaintiffs are adverse to those of the actual plaintiffs in a wrongful-death action. This is not necessarily correct.¹⁹ But whether Sobo and the use plaintiffs are characterized as “adverse” is beside the point. As the Court explained in *Geisz*, the purpose of Cts. & Jud. Proc. § 5-203 was to extend to actions at law the equitable principle that certain kinds of wrongful conduct by a party can estop it from raising a limitations defense. Sobo, not Medicine Associates, was guilty of the wrongful conduct in this case, and there is no legal or logical basis to reopen the wrongful-death action against Medicine Associates after the three-year limitations period had passed.

7. Md. Rule 15-1001(e)

The next step in our analysis is to decide how Md. Rule 15-1001(e) applies to appellants’ motion to revise the judgment. Section (e) states:

(e) Waiver by Inaction.

(1) *Definitions*. In this section and in section (f) of this Rule, “statutory deadline” means the applicable deadline stated in [Cts. & Jud. Proc. §§ 3-904(g), 5-201(a)], and “served notice deadline” means the additional

¹⁹ If the use plaintiffs joined the action, their interests and those of Sobo and the minor children would have coincided with regard to proving the defendants’ liability. Their respective interests might have conflicted if the assets available to Medicine Associates were not enough to satisfy the damage awards. See Robert A. Michael, *The “USE” Plaintiff in Maryland Wrongful Death Cases: Some Ethical Observations*, Fall 2008 Trial Reporter 9, 13 (2008).

applicable deadline stated in the notice given pursuant to section (d) of this Rule.

(2) *Failure to Satisfy Statutory Time Requirements.* An individual who fails to file a complaint or motion to intervene by the statutory deadline may not participate in the action or claim a recovery. . . .

Appellees argue section (e) bars appellants from attempting to revise the judgment and to intervene in the wrongful-death action. We agree. This is the plain language of the rule. Such a result is consistent with Maryland statutory requirement that there can be only one wrongful-death action arising out of the death of a person. Any lingering doubts about the matter were resolved by the Court of Appeals in *Carter v. Wallace & Gale Asbestos Settlement Trust*, 439 Md. 333 (2014).

As to plain language, Md. Rule 15-1001(e)(2) states that “[a]n individual who fails to file a complaint or motion to intervene by the statutory deadline may not participate in the action or claim a recovery.” The statutory deadline is three years. Cts. & Jud. Proc. §§ 3-904(g), 5-201(a). “[P]articipat[ing] in the action” includes filing motions to revise the judgment and to intervene. Appellants are claiming the right to a recovery from Medicine Associates.

Next, Cts. & Jud. Proc. § 3-904(f) provides that there can be only one wrongful-death action “in respect to the death of a person.” The one-action rule is intended to protect defendants from multiple lawsuits from the various persons who are entitled by statute to a recovery in a wrongful-death action. *See, e.g., Carter*, 439 Md. at 363 (“[T]he purpose of the one action rule is to protect a defendant from being vexed by several suits instituted by or on behalf of different equitable plaintiffs for the same injury, when all the parties could

be joined in one proceeding.” (cleaned up)). Moreover, Cts. & Jud. Proc. § 3-904 “does not allow for claims to be severed, and “[a] judgment should not [be] entered in the circuit court unless it included the interests of all the known beneficiaries.” *Id.* 363–64.

As Medicine Associates points out in its brief, one purpose of Md. Rule 15-1001 is to implement the one-action rule. It does so by requiring use plaintiffs who are served with the statutory notice to intervene in a wrongful-death action within a deadline that varies upon the residency status of the use plaintiffs. Md. Rule 15-1001(c). If an individual is not identified as a use plaintiff or, presumably, if a use plaintiff was identified but not served, he or she has a right to intervene within the statutory deadline of three years of the decedent’s death. Md. Rule 15-1001(f). The importance of the statutory deadline is underscored by another provision of the rule, which allows a court to permit the filing of an untimely motion to intervene “for good cause shown.” Md. Rule 15-1001(e)(3). However, “[t]he court may not excuse the late filing if the statutory deadline is not met.” *Id.*

The Court of Appeals has explained that sections (c) through (f) were added to Md. Rule 15-1001 in 2012 to “implement holdings of the Court” in *University of Maryland Medical System v. Muti*, 426 Md. 358 (2012), by making it clear that the appropriate procedural pathway for a use plaintiff to participate in a wrongful-death action is to file a motion to intervene. *Carter*, 439 Md. at 369–70.

The lawsuit at issue in *Carter* was filed before the effective date of the amendments to Md. Rule 15-1001, which was January 1, 2013. However, the Court stated, albeit in *dicta*, that

if [the Court] were evaluating the facts of this case under the state of the law following the 2012 amendments to [Md. Rule 15-1001], our inquiry would be whether the use plaintiffs “file[d] a complaint or motion to intervene by the statutory deadline.” [Md. Rule 15-1001(e)(2)]. This would be a very brief inquiry because it is clear by all accounts that the use plaintiffs did not ever formally join in the present action. Therefore, if the trial in the case at bar took place on or after January 1, 2013, the use plaintiffs would all be barred from recovery because the statute of limitations would have run long before any formal joinder occurred.

Id. at 376.

Because we have held that Cts. & Jud. Proc. § 5-203 does not apply to this case, we conclude that Md. Rule 15-1001(e) forecloses appellants from filing motions to revise and to intervene in the wrongful-death action that is the subject of this appeal. Appellants’ remedies, to the extent that they exist, lie elsewhere.²⁰

8. The Minor Children

Appellants argue that the circuit court erred by not vacating the judgments awarded to Sobo’s minor children. This is because Sobo’s opposition to appellants’ motion to vacate the judgment was filed only on behalf of himself and as the personal representative of the

²⁰ In their brief, appellants suggest that our holding in *Pinner v. Pinner*, 240 Md. App. 90 (2019), *aff’d* 476 Md. 463 (2020), may foreclose the possibility of their successfully pursuing a civil action against Sobo and/ or the law firm. We express no opinion as to this issue.

estate of the decedent. This contention is set out in a footnote, and appellants provide no authority for their contention.

We decline to address the (at best questionable) merits of this argument. By failing to properly brief the issue, appellants have waived it. *See* Md. Rule 8-504(a)(6) (A brief shall include “argument in support of the party’s position on each issue.”); *Poole v. State*, 207 Md. App. 614, 633 (2012) (noting that the Court will not consider an argument “made in one sentence, in a footnote, with no supporting argument”).

9. Sanctions

Finally, appellants request us to remand this case so that the circuit court can hold a hearing on their request for sanctions against Sobo and/or the law firm. Appellants allege they are entitled to monetary sanctions to compensate them for having been deprived of the opportunity to participate and recover damages in the wrongful-death lawsuit, as well as for incurring attorney’s fees and costs in moving to vacate the \$2,006,250 judgment. For support, appellants cite the Court of Appeals’ direction to the circuit court in *Muti* (emphasis added):

On the record before us, there is no basis for inferring that Ricky was omitted as a use plaintiff for the purpose of hiding the litigation from him or in the hope that the Mutis would increase their recovery. Under the totality of the circumstances, we hold that the circuit court abused its discretion in dismissing the Plaintiffs’ wrongful death claims as a sanction for the omission. *Consequently, we shall remand this case to the circuit court. On remand, the court may consider in its discretion, what, if any, sanction for the omission is appropriate from the standpoint of reinforcing for the Bar as a whole the requirement for naming, as a use plaintiff, a potential beneficiary.*

426 Md. at 384–85.

The *Muti* Court was clearly concerned about misconduct on the part of plaintiffs’ counsel (and perhaps the plaintiffs themselves) for violating Md. Rule 15-1001 by failing to name Ricky as a use plaintiff. We believe that the conduct of Sobo and perhaps that of the law firm in the present case was equally problematic. But in *Muti*, the Court suggested to the trial court that it consider imposing sanctions in the context of remanding a case to that court for a disposition on its merits. In the present case, appellants ask us to hold that the circuit court erred in declining to impose sanctions in a case more than a year after final judgment was entered. Appellants’ arguments as to why we should do so are not persuasive.

First, appellants assert that Sobo and the law firm should be sanctioned for violating the Maryland Attorneys’ Rules of Professional Conduct, specifically Md. Rules 19-303.2 and 19-303.4(c).²¹ This contention is misplaced. There is nothing in the record that suggests that Sobo is a lawyer. If he is not, then the Rules of Professional Conduct do not apply to him. More fundamentally, the Rules of Professional Conduct “are not designed to be a basis for civil liability.” Md. Rule 19-300.1(20). Moreover, “the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons.” *Id.*

²¹ Md. Rule 19-303.2 provides that “[a]n attorney shall make reasonable efforts to expedite litigation consistent with the interests of the client.” Md. Rule 19-303.4(c) states that a lawyer shall not “knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.”

Invocation of the Rules of Professional Conduct in the manner suggested by appellants is inappropriate.

Second, appellants contend that the circuit court has the authority to impose sanctions pursuant to Md. Rule 1-341(a), which states:

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys' fees, incurred by the adverse party in opposing it.

The concepts of “bad faith” and “without substantial justification” in the context of Md. Rule 1-341 are well-defined. This Court recently explained that:

A party lacks substantial justification to maintain or defend a proceeding when it has no reasonable basis for believing that the claims would generate an issue of fact for the fact finder or when the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for extension, modification or reversal of existing law.

State v. Braverman, 228 Md. App. 239, 260, *cert. denied sub nom. Goldberg v. State*, 450 Md. 115 (2016) (cleaned up). “In bad faith means vexatiously, for the purpose of harassment or unreasonable delay, or for other improper reasons.” *Inlet Assocs. v. Harrison Inn Inlet, Inc.*, 324 Md. 254, 268 (1991) (cleaned up).

Appellants' argument that Md. Rule 1-341 is a means by which they can be compensated “for having been deprived of the opportunity to participate and recover damages in the wrongful-death lawsuit” is not persuasive because the rule permits recovery

of “costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees.” Md. Rule 1-341(a) is not a broad grant of authority for a court to award damages based upon its assessment of the equities of a case. Rather, the rule “is intended merely to compensate the aggrieved party for their reasonable costs and expenses, including reasonable attorney’s fees.” *Christian v. Maternal-Fetal Med. Assocs.*, 459 Md. 1, 19 (2018) (cleaned up).

We have no difficulty in equating Sobo’s conduct *in the wrongful-death action* with “bad faith” and we will assume for purposes of analysis that the law firm’s mishandling of the service of process problem could be similarly characterized. Nonetheless, appellants expended no legal fees and incurred no costs in that proceeding. There is no basis for a Md. Rule 1-341 award to appellants arising out of the wrongful-death action itself.

Appellants’ fees and costs were incurred as the result of their efforts to vacate the judgment and to intervene in the case for a new trial on damages. In the post-judgment proceedings, Sobo did not contest appellants’ allegations as to his prior wrongdoings. And he, along with Medicine Associates, successfully (and correctly) argued that appellants’ request to revise the wrongful-death judgment for a new trial on damages was not meritorious.

Md. Rule 1-341 “requires a court to make two separate findings.” *Christian*, 459 Md. at 20. The trial court:

must first find that the conduct of a party during a proceeding, in defending or maintaining the action, was without substantial justification or was done in bad faith. An appellate court reviews this finding for clear error or an

erroneous application of the law. . . . Next, the judge must separately find that the acts committed in bad faith or without substantial justification warrant the assessment of attorney’s fees. An appellate court reviews this finding under an abuse of discretion standard.

Id. at 20–21 (cleaned up).

In the present case, the circuit court appropriately stopped at step one when it concluded that there was no “showing of bad faith here that would support an award of sanctions.” Because the proper focus of the court’s attention as to sanctions was on appellants’ motions to revise the judgment, to intervene, and for sanctions, we cannot say that the circuit court’s finding was clearly erroneous. In fact, we do not see how the court could have reached any other conclusion based on the record before it.

**THE JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY COUNTY
IS AFFIRMED. APPELLANTS TO PAY
COSTS.**