

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 78

September Term, 2020

FELICIA MAXSAM

v.

DAVID MAXSAM

Friedman,
Beachley,
Shaw Geter

JJ.

Opinion by Friedman, J.

Filed: May 18, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Felicia Maxsam, challenges that the Circuit Court erred in granting Appellee David Maxsam’s Motion to Revise and Amend Qualified Domestic Relations Order (“QDRO”) because the Motion was filed more than 30 days after the Order was signed by the Court. For the reasons that follow, we affirm the ruling of the Circuit Court.

FACTS

Felicia and David were divorced in September 2003 after approximately 11 years of marriage. As part of the Judgment of Absolute Divorce, Felicia was awarded 50% of the marital share of David’s pension. Although David was ordered to prepare and submit a QDRO to comply with that award, no order was ever filed and the parties lost touch.

David began collecting his pension in 2012. Because there was no QDRO in place, David collected the full amount each month and nothing was distributed to Felicia. Several years later, Felicia began making efforts to remedy the situation and hired QDRO Solutions, LLC to prepare a “Domestic Relations Order for Non-Erisa Municipal Pension Plan.” In December 2018, Felicia submitted her first proposed QDRO to the Circuit Court for approval. David was not notified about the filing. Although the proposed order was approved and signed by the Circuit Court, the pension plan administrator in Michigan rejected it because it was missing required information. In April 2019, Felicia filed a second proposed QDRO, also prepared by QDRO Solutions. David was again not notified about the filing. This time, the Circuit Court declined to sign the proposed QDRO because it was signed only by Felicia rather than by both parties and had not been approved by a magistrate. After the second QDRO was rejected, Felicia engaged counsel who filed a third

proposed QDRO on Felicia’s behalf. This time, a copy of the proposed motion was mailed to David. Although the third proposed QDRO was still signed only by Felicia and not approved by a magistrate, the Circuit Court nonetheless signed the order in chambers on August 1, 2019. After it was signed, the Court attempted to send a copy to David but mailed it to an incorrect address. The copy of the signed order was returned to the Court and David was never notified that a QDRO had been signed.

David became aware of the QDRO approximately two months later when, on October 4, 2019, the Michigan Office of Retirement Services sent him a letter notifying him that the amount he received each month would be reduced because a portion of his pension would now be distributed to Felicia. There was, however, an error in how the pension was being divided. Although the Judgment of Absolute Divorce had awarded Felicia 50% of the *marital share* of David’s pension—which would have amounted to approximately \$143 per month—the QDRO directed the pension plan administrator to send Felicia 50% of the *entire* pension—an amount equal to \$733.36 per month.

David promptly retained counsel and filed a Motion to Revise and Amend the QDRO to comply with the award granted in the Judgment of Absolute Divorce. At a hearing on David’s motion in February 2020, Felicia’s counsel acknowledged that the way the third QDRO was worded, it effectively—though unintentionally—modified the award granted in the Judgment of Absolute Divorce. Counsel nonetheless took the position that because David’s Motion to Revise and Amend was not filed until October 21, 2019—81 days after the Circuit Court had signed the QDRO in August—the Circuit Court no longer

had authority to amend the Order and the third QDRO had to remain in effect. David’s counsel argued, in turn, that he had not received proper notice of Felicia’s filings and therefore the QDRO should be struck. At the conclusion of the hearing, the Circuit Court concluded that equitable relief was appropriate. The Circuit Court therefore granted David’s motion to Revise and Amend the Domestic Relations Order, struck the existing QDRO and ordered the parties to submit a corrected QDRO for the Court to sign.¹ The Circuit Court signed the Amended Domestic Relations Order on February 28, 2020.

DISCUSSION

Because David’s Motion to Revise the QDRO was filed more than 30 days after the judgment was entered, the Circuit Court’s authority to exercise its revisory power must come from Maryland Rule 2-535(b), which provides that a court may exercise its revisory power at any time “in case of fraud, mistake, or irregularity.” MD. RULE 2-535(b). The burden of proof to establish the existence of fraud, mistake, or irregularity is clear and convincing evidence. *Facey v. Facey*, 249 Md. 584, 601 (2021); *Peay v. Barnett*, 236 Md. 306, 321 (2018). Whether the factual predicate for fraud, mistake, or irregularity can be supported is a question of law that we review without deference. *Facey*, 249 Md. at 601. If the factual predicate exists, we review a trial court’s decision to grant equitable relief for an abuse of discretion only. *Facey*, 249 Md. at 601.

¹ Because David had been receiving payments on his pension for several years before a QDRO was in place, there were significant arrearages payable to Felicia at the time of the hearing. The parties entered into a Consent Order to arrange for their repayment.

Where, as here, a motion to revise a judgment is based on “mistake,” “the mistake must be confined to those instances where a jurisdictional mistake is involved.” *Pickett v. Noba, Inc.*, 114 Md. App. 552, 558 (1997). A jurisdictional 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.” *Peay*, 236 Md. at 322 (quoting *Chapman v. Kamara*, 356 Md. 426, 436 (1999) (quoting *Tandra S. v. Tyrone W.*, 336 Md. 303, 317 (1994)). “Improper service of process is a proper ground to strike a judgment under Rule 2-535.” *Pickett*, 114 Md. App. at 558 (citing *Miles v. Hamilton*, 269 Md. 708, 714 (1973)).

Felicia asserts that because her attorney sent David a copy of the third proposed QDRO by first-class mail, David was made aware of her filing and thus there could be no jurisdictional mistake. The Circuit Court disagreed, and so do we.

“[T]he purpose of service of process is to give the defendant fair notice of the action against him and the resulting fair opportunity to be heard.” *Conwell Law LLC v. Tung*, 221 Md. App. 481, 500 (2015) (quoting *Mooring v. Kaufman*, 297 Md. 342, 350 (1983)). Because “defective service of process is a jurisdictional defect ... actual knowledge of the proceedings ... will not cure that defect.” *Lohman v. Lohman*, 331 Md. 113, 130 (1993) (internal citations omitted); *see also LVI Env'tl. Services, Inc. v. Acad. of IRM*, 106 Md. App. 699, 706 (1995), *aff'd*, 344 Md. 434 (1997) (noting that if service of process is defective, a court has not obtained jurisdiction over the party and actual notice of the action will not cure that defect); *Reed v. Sweeney*, 62 Md. App. 231, 237-38 (1985) (“Because service of process raises jurisdictional issues and focuses upon the power of a court to exert

its authority over a particular party, it cannot be waived or ignored simply because the defendant had actual notice of the action.”).

The requirements for proper service of process are governed by the Maryland Rules. Rule 2-121(a) provides that general service of process to an individual can be made by (1) delivering it to the person being served, (2) leaving it with a “resident of suitable age and discretion” at the party’s place of abode, or (3) mailing it via certified mail. MD. RULE 2-121(a). There is no hint in the record that Felicia or her attorney ever attempted to serve David with the proposed QDRO in compliance with the requirements of Rule 2-121, nor do they claim to have done so.

In the alternative, service might be made under Rule 1-321, which governs service of pleading and papers in other than an original action. *See generally* MD. RULE 1-321. Service to David under Rule 1-321 could be proper under the doctrine of continuing jurisdiction, which provides that “if a court obtains personal jurisdiction initially over parties to an action ... its jurisdiction continues throughout all subsequent proceedings which arise out of the original cause of action.” *Flanagan v. Dep’t of Human Res.*, 412 Md. 616, 628 (2010) (citing *Glading v. Furman*, 282 Md. 200, 204 (1978); *Michigan Trust Co. v. Ferry*, 228 U.S. 346, 353 (1913)). Under this theory, the Circuit Court’s jurisdiction over David would have continued from the original divorce proceedings until Felicia’s filing of the various proposed QDROs. “In order for the court to maintain personal jurisdiction under the doctrine, however, the defendant must receive reasonable notice and be afforded an opportunity to be heard at each new step in the case if an *in personam* decree is to be

rendered against him.” *Flanagan*, 412 Md. at 628. Under Rule 1-321(e), a motion to modify a civil judgment filed more than 30 days after entry of the original judgment must still be served with a summons “in accordance with the rules for service of an original pleading.” MD. RULE 1-321(e). Here, although Felicia’s motion was titled only as a “Motion for Entry of Amended Domestic Relations Order,” the substance of her motion proposed a significant change—whether intentional or not—to the award that had been granted in the parties’ Judgment of Absolute Divorce. *See Davis v. Bd. of Educ. for Prince George's County*, 222 Md. App. 246, 271 (2015) (noting that under Maryland law “the nature of a motion is determined by the relief it seeks and not its label or caption”) (quoting *Hill v. Hill*, 118 Md. App. 36, 44 (1997)). Because Felicia’s motion was filed more than 30 days after entry of the Judgment of Absolute Divorce and modified the award made in that Judgment, service of process had to be made in accordance with Rule 2-121. As previously noted, there is no evidence in the record that proper service was attempted.

We conclude that there is clear and convincing evidence of a jurisdictional mistake that authorized the Circuit Court to exercise its revisory power under Maryland Rule 2-535(b). Moreover, we are not persuaded that the Circuit Court abused its discretion in granting David equitable relief.

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