

Circuit Court for Montgomery County
Case No.: 177787FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 151

September Term, 2023

DINA T. JACKSON

v.

RODWELL BAILEY

Wells, C.J.,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: October 13, 2023

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

In 2021, Rodwell Bailey, appellee, sued Dina T. Jackson, appellant, for sole legal and physical custody of their minor child as well as child support. Jackson counterclaimed seeking joint custody as well as child support. In her pretrial statement, Jackson alleged that Bailey had concealed certain assets—specifically, income from various investment properties—in his financial statements.

The Circuit Court for Montgomery County held a two-day merits trial in November 2022. The court delivered an oral ruling a month later awarding Bailey sole legal and physical custody as well as child support. Jackson moved to amend the judgment the same day, alleging that the court did not evaluate and consider the income from Bailey’s investment properties. The court denied Jackson’s motion on January 11, 2023. Two days later, the court entered a written Custody and Child Support Order.

On February 23, Jackson moved to vacate the court’s order, repeating her charge that the court failed to consider Bailey’s alleged concealed income from his investment properties in making its child support determination. The court denied Jackson’s motion, she appealed, and we affirm.

Jackson moved to vacate the court’s order more than thirty days after it was entered. Under Maryland Rule 2-535(b), the trial court could “exercise revisory power and control over the judgment” only “in case of fraud, mistake, or irregularity.” We ordinarily review a court’s decision to deny a 2-535(b) motion for an abuse of discretion. *See Das v. Das*, 133 Md. App. 1, 15 (2000). But the preliminary determination of whether “a factual predicate of fraud, mistake, or irregularity” exists “is a question of law,” and we “review

the trial court’s decision regarding the existence of fraud, mistake, or irregularity without deference.” *Facey v. Facey*, 249 Md. App. 584, 601 (2021) (cleaned up).

Not every instance of fraud, however, allows a trial court to exercise its revisory powers: “Only extrinsic fraud will justify the reopening of an enrolled judgment; fraud [that] is intrinsic to the trial itself will not suffice.” *Bland v. Hammond*, 177 Md. App. 340, 350 (2007). Intrinsic fraud is “employed during the course of the hearing or trial [that] provides the forum for the truth to appear.” *Id.* at 351. If the fraud ““pertains to issues involved in the original action or where acts constituting fraud were, or could have been, litigated therein[,]” it is intrinsic. *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990) (quoting *Black’s Law Dictionary* (5th ed. 1979)). Extrinsic fraud, in contrast, “actually prevents an adversarial trial[.]” *Bland*, 177 Md. App. at 351. As we explained in *Hresko*, “[i]n determining whether . . . extrinsic fraud exists, the question is not whether the fraud operated to cause the trier of fact to reach an unjust conclusion, but whether the fraud prevented the actual dispute from being submitted to the fact finder at all.” 83 Md. App. at 232.

The Supreme Court of Maryland has provided examples of extrinsic fraud, all of which involve the offending party thwarting the proceeding itself:

Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney regularly employed corruptly sells out his client’s interest to the other side,—these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing.

Schwartz v. Merchants Mortg. Co., 272 Md. 305, 309 (1974) (cleaned up).

Jackson argues that the trial court erred in denying her motion because Bailey concealing his assets was extrinsic fraud. Bailey counters that Jackson failed to set forth any basis on which the court could have found that extrinsic fraud occurred. Bailey is correct.

This case is not a novel one. We dealt with similar allegations of extrinsic fraud in *Hresko*. There, an ex-husband filed a Rule 2-535(b) motion asking the court to revise its judgment of absolute divorce and rescind the separation and property agreement that had been incorporated into the judgment. *Hresko*, 83 Md. App. at 230. Like Jackson, the ex-husband in *Hresko* claimed that his ex-wife concealed assets from him during negotiations for the agreement. *Id.* He argued that this constituted extrinsic fraud because his ex-wife’s “fraudulent representations were extrinsic to the subsequent divorce action because they took place over two years before its inception and served to prevent [him] from taking advantage of his right to an adversarial proceeding.” *Id.* at 233. Although we noted that courts around the country appeared split on this issue, we ultimately held that “[m]isrepresentations or concealment of assets made in negotiations leading to a voluntary separation and property settlement agreement later incorporated into a divorce decree represent matters intrinsic to the trial itself.” *Id.* at 235. And we affirmed the trial court’s decision to deny the ex-husband’s motion because he “had every opportunity to examine [the allegedly fraudulent] representations through discovery methods or in court.” *Id.* at 236.

This case is even farther from extrinsic fraud than the allegations at issue in *Hresko*. Both are domestic cases involving (allegedly) concealed assets. But where the ex-husband in *Hresko* did not learn of the assets until after the judgment was entered, here, Jackson admits she knew about the assets before trial. Not only that: she argued to the court before and during the merits hearing that Bailey had concealed them. On appeal, Jackson argues that Bailey’s alleged “numerous material misrepresentations during the course of the proceedings . . . prevented [the trial court] from rendering a true judgment on the merits.” But she “had every opportunity to examine [the allegedly fraudulent] representations” at trial. *Id.* That the alleged fraud may have successfully deceived the trial court, causing it “to reach an unjust conclusion[,]” does not make the fraud extrinsic; the dispute was still submitted to the fact finder. *Id.* at 232.

In the end, even if Jackson’s allegations were true, the fraud was “employed during the course of the hearing or trial which provide[d] the forum for the truth to appear,” *Bland*, 177 Md. App. at 351, and it “pertain[ed] to . . . acts [that] could have been[] litigated therein,” *Hresko*, 83 Md. App. at 231 (cleaned up). In other words, the fraud allegations here were not extrinsic and, as such, are insufficient to sustain a Rule 2-535(b) motion. The trial court thus did not err in denying Jackson’s motion to vacate.

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