Circuit Court for Montgomery County
Case No.: 441353-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 153

September Term, 2019

ROY G. JOSEPH

v.

THOMAS HOWES

Berger,
Nazarian,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: April 20, 2020

We are called upon to determine whether a motion for reconsideration was timely filed so as to toll the time with which to secure in banc review in a civil case, pursuant to Rule 2-551(b). Rule 2-551(b), in relevant part, states:

> Except as otherwise provided in this Rule, the notice for in banc review shall be filed within ten days after entry of judgment. When a timely motion is filed pursuant to Rule 2-532,[1] 2-533,[2] or 2-534,[3] the notice for in banc review shall be filed within ten days after (1) entry of an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534 or (2) withdrawal of the motion.

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[1] Section (a) of Rule 2-532, Motion for Judgment Notwithstanding the Verdict, delineates when a motion pursuant to the Rule is permitted:

> In a jury trial, a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion.

[2] Section (a) of Rule 2-533, the rule which governs motions for a new trial, in pertinent part, provides:

> Any party may file a motion for new trial within ten days after entry of judgment. A party whose verdict has been set aside on a motion for judgment notwithstanding the verdict or a party whose judgment has been amended on a motion to amend the judgment may file a motion for new trial within ten days after entry of the judgment notwithstanding the verdict or the amended judgment.

[3] Rule 2-534, the rule which governs motions to alter or amend a judgment or other court decision, in pertinent part, provides:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

Rules 2-532, 2-533, and 2-534 are post-judgment rules in civil cases permitting revision of a judgment.

In order to constitute a judgment, an "order or other form of decision" must settle the rights of the parties and conclude the cause of action. *Taha v. Southern Mgmt. Corp.*, 367 Md. 564, 567 (2002); *see* Rule 2-602(a).[4] A "judgment is created through 'a rendition of the judgment by the court'" and "'entry of the judgment by the clerk.'" *Won Bok Lee v. Won Sun Lee*, 466 Md. 601, 641 (2020) (quoting *Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 485 (2014)). A rendition of a judgment "'is the court's pronouncement of its decision upon the matter submitted to it for adjudication[,]' and the entry of a judgment occurs where the judgment is set forth on a separate document and entered in accordance with Maryland Rule 2-601." *Id.* at 641–42 (quoting *Hiob*, 440 Md. at 485–86); *see also Davis v. Davis*, 335 Md. 699, 710 (1994). Rule 2-601 embodies the requirements for the entry of a judgment, and provides in relevant part:

> (a) Separate Document – Prompt Entry. (1) Each judgment shall be set forth on a separate document . . ..

[4] Rule 2-602(a), which governs judgments not disposing of an entire action, provides:

> Except as provided in section (b) of this Rule, an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action:
> (1) is not a final judgment;
> (2) does not terminate the action as to any of the claims or any of the parties; and
> (3) is subject to revision at any time before the entry of judgment that adjudicates all of the claims by and against all of the parties.

> (2) Upon a verdict of a jury or a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith prepare, sign, and enter the judgment, unless the court orders otherwise.
> (3) Upon a verdict of a jury or a decision by the court granting other relief, the court shall promptly review the form of the judgment presented and, if approved, sign it, and the clerk shall forthwith enter the judgment as approved and signed.
> (4) A judgment is effective only when so set forth and when entered as provided in section (b) of this Rule.
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> (b) Applicability – Method of Entry – Availability to the Public.
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> (2) Entry. The clerk shall enter a judgment by making an entry of it on the docket of the electronic case management system used by that court along with such description of the judgment as the clerk deems appropriate.

The second act, "the clerk's entry of the judgment on the docket—is the purely ministerial act by means of which permanent evidence of the judicial act of rendering the judgment is made a record of the court." *Davis*, 335 Md. at 710.

In the present case, Roy Joseph, Appellant, has asked the following question:

> Did the Court err in denying Defendant's Motion to Strike Plaintiff's Notice for In Banc review, as it was filed 42 days after the order dismissing the Amended Complaint and the issuance of a separate document, and Plaintiff's Motion for Reconsideration (filed thirteen days after the order/separate document docketing) did not delay the time period in which to seek In Banc review?

For the reasons that follow, we answer in the negative and shall affirm.

On August 27, 2018, a judge sitting in the Circuit Court for Montgomery County, during a hearing, orally dismissed an amended complaint alleging libel and slander against Appellant, filed by Thomas Howes, Appellee; the judge signed an order to that effect on the same day.

The next day, on August 28, 2018, the Clerk of the Court added a Notice of Dismissal to the case docket pursuant to Rule 2-601(b)(2).[5] The Notice of Dismissal, which had been signed by the Clerk, stated:

> **NOTICE OF DISMISSAL**
> (1475)
>
> The above-captioned case having been set for a hearing or trial on August 27, 2018, the court dismissed the case on that date as follows:
>
> COURT (CHO, J.) DISMISSES CASE WITH PREJUDICE.
>
> You may move to vacate the Dismissal within thirty (30) days of the date the case was dismissed.

The judge's order previously signed on August 27, 2018, was docketed on August 29, 2018. It granted Defendant's (Appellant's) Motion to Strike and/or Dismiss with prejudice Plaintiff's (Appellee's) Amended Complaint as well as dismissed Plaintiff's Amended Complaint with prejudice.[6] The Appellee, then, on September 10, 2018, filed a

[5] Rule 2-601(b) previously provided:

> Method of Entry – Date of Judgment. The clerk shall enter a judgment by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court, and shall record the actual date of the entry. That date shall be the date of judgment.

The change, which now requires the clerk to "enter a judgment by making an entry of it on the docket of the electronic case management system used by that court," was necessitated by the use of MDEC (Maryland Electronic Courts) and Maryland Judiciary Case Search. *See Won Bok Lee v. Won Sun Lee*, 466 Md. 601, 622–23 (2020) (citing Rules Committee, One Hundred Eighty-Sixth Report at 10–11 (Sept. 26, 2014), *available at* https://www.mdcourts.gov/sites/default/files/rules/reports/186th.pdf [https://perma.cc/BW75-YPT9]).

[6] Other motions also were rendered moot by the court's order.

Motion to Reconsider, as his entire complaint had been dismissed with prejudice. The Motion to Reconsider would have been filed timely were the judgment to have been entered on August 29, 2018, but untimely were it to have been entered on August 28, 2018. *See* Rule 1-203(b).[7]

After the Motion to Reconsider was denied on October 3, 2018, Appellee, on October 9, 2018, requested in banc review, which was granted. The panel determined that the in banc request was timely, after hearing argument regarding Appellant's motion to strike.[8] It also reversed a portion of the trial judge's order and reinstated various of the libel and slander counts posited by Appellee. Appellant then moved for dismissal of the remaining counts but also appealed to this Court.

In his appeal, Appellant contends that the in banc notice was not effective to initiate a panel review because it was filed forty-two days after the Clerk's dismissal in violation

[7] Rule 1-203(b) governs the time requirements set forth in the Maryland Rules and provides:

> In determining the latest day for performance of an act which is required by these rules, by rule or order of court, or by any applicable statute, to be performed a prescribed number of days before a certain day, act, or event, all days prior thereto, including intervening Saturdays, Sundays, and holidays, are counted in the number of days so prescribed. The latest day is included in the determination unless it is a Saturday, Sunday, or holiday, in which event the latest day is the first preceding day which is not a Saturday, Sunday, or holiday.

The Motion to Reconsider would have been timely as to August 29, 2018, because the ten-day period expired on a Saturday.

[8] Appellant, in his motion to strike the notice for in banc review, advanced essentially the same arguments he does before us.

of Rule 2-551(b). Only if Appellee's post-judgment motion, entitled Motion to Reconsider, comported with Rule 2-532, or 2-533, or 2-534 and his Notice of In Banc review was filed within ten days of the denial of his Motion to Reconsider would in banc review have been appropriately initiated.

With respect to Rule 2-601, we "apply the same principles when interpreting rules as we apply when interpreting statutes." *In re Kaela C.*, 394 Md. 432, 467 (2006) (citations omitted). Our analysis begins by first looking to the plain meaning of the rule's language, our examination of which is guided by the principle that we should read the rule as a whole, "so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." *Id.* (quoting *Mayor and Town Council of Oakland v. Mayor and Town Council of Mountain Lake Park*, 392 Md. 301, 316 (2006)) (further citations omitted). If the language of the rule is subject to more than one interpretation, it is ambiguous, and we resolve that ambiguity by looking to the rule's history, case law, and its purpose. *Id.* at 468 (citations omitted). If, however, the rule is "clear and unambiguous, we need not look beyond the provision's terms to inform our analysis." *Id.* (quoting *City of Fredrick v. Pickett*, 392 Md. 411, 427 (2006)).

Rule 2-601 requires that a judgment be rendered as well as docketed. Rule 2-601 has been amended by the Court of Appeals on numerous occasions in 2015 and thereafter, *see Won Bok Lee*, *supra*, 466 Md. 601, although the concept of "entry of judgment" historically has been and continues to be informed by *Davis*, *supra*, 335 Md. 699. In *Davis*, Rule 2-601, in relevant part, stated:

> (a) *When entered.*—Upon a general verdict of a jury or upon a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith enter the judgment, unless the court orders otherwise. Upon a special verdict of a jury or upon a decision of the court granting other relief, the clerk shall enter the judgment as directed by the court. Unless the court orders otherwise, entry of the judgment shall not be delayed pending a determination of the amount of costs.
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> (b) *Method of entry—Date of Judgment.*—The clerk shall enter a judgment by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court, and shall record the actual date of entry. That date shall be the date of the judgment.

Id. at 709–10. In that case, Husband filed a complaint for limited divorce, to which Wife responded by filing a counterclaim for absolute divorce, alimony, and other relief. *Id.* at 702. On February 28, 1990, at the conclusion of a hearing limited to the issue of grounds for divorce, the trial judge concluded that an absolute divorce, rather than a limited divorce, should be granted, but reserved "the authority under [Section 8-203(a) of the Family Law Article] to make a marital award" at a later date. *Id.* at 703. The same day, the clerk added an entry to the docket reflecting the grant of divorce. *Id.*

The parties, on their own initiative, drafted an order of divorce and forwarded the order to the court, "although the court had at no time during the February 28 hearing indicated that a written order of divorce would be issued." *Id.* at 704. On June 11, 1990, the judge signed the order drafted by the parties, which was docked as "Order for Judgment of Absolute Divorce filed and copy mailed [to] Attorneys." *Id.* On July 2, 1991, a written Opinion and Order was entered with respect to the distribution of property between the parties; on January 7, 1992, the court denied both parties' post-judgment motions. *Id.* at 705.

Husband filed an appeal with this Court on January 20, 1992, in which he challenged the marital property division as well as the validity of the absolute divorce. *Id.* at 705–07. When the judgment of divorce was entered, either on February 28, 1990 or June 11, 1990, was pivotal. Both we and the Court of Appeals agreed that Husband's time to complain about the grant of absolute divorce had lapsed; the Court of Appeals concluded that he was required to note an appeal within thirty days of February 28, 1990, because it was the day upon which the court rendered the judgment of divorce and the Clerk's ministerial act also occurred. *Id.* at 717.

In the present case, the judge signed her order dismissing the case on August 27, 2018, which was docketed on August 29, 2018. The prerequisites of *Davis* and Rule 2-601 were thus met on August 29, 2018. The Clerk's notice on August 28, 2018, did not, thereby, constitute the entry of judgment.

Appellant, though, also contends that Appellee's Motion to Reconsider did not serve to toll the ten-day period delineated in Rule 2-551(b) to request in banc review from the entry of judgment because the Motion to Reconsider was not filed pursuant to Rules 2-532, or 2-533, or 2-534. He posits that Appellee's motion was advanced pursuant to Rule 2-535 which, in pertinent part, provides:

> (a**)** Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

> (b) Fraud, Mistake, Irregularity. 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.
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> (c) Newly-Discovered Evidence. On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.
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> (d) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

Appellant's argument, however, is without merit.

In the present case, Appellee's "Motion to Reconsider" does not meet the tenets of Rule 2-532, as a jury trial is not implicated, nor Rule 2-533, as a verdict after a trial is not in issue. With Rules 2-534 and 2-535, thus, remaining, Sections (b), (c), and (d) of Rule 2-535 do not apply as the motion did not allege fraud, mistake, or irregularity in the case nor newly discovered evidence nor a clerical mistake. Rule 2-535(a), moreover, recognizes the umbrella nature of Rule 2-534 regarding motions to alter and amend, such that Rule 2-534 is the governing rule, as we have so recognized. *See Torbit v. Baltimore City Police Dep't*, 231 Md. App. 573 (2017); *Cave v. Elliott*, 190 Md. App. 65 (2010); *Sieck v. Sieck*, 66 Md. App. 37, 44–45 (1986) (noting that a motion to revise in a civil matter, "however labeled, filed within ten days after the entry of judgment will be treated as a Rule 2-534 motion").

Accordingly, we conclude that the in banc review request was timely filed and affirm the decision of its panel.

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