

Circuit Court for Howard County  
Case No. 13-C-16-106920

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 219

September Term, 2018

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ANDRE L. LIVINGSTON

v.

SIMONA JONES

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Wright,  
Kehoe,  
Friedman,

JJ.

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Opinion by Friedman, J.

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Filed: May 16, 2019

\*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.

In this child support dispute, Andre L. Livingston, Father, appeals from an order of the Circuit Court for Howard County denying his post-judgment request for modification of a child support order. Simona M. Jones, Mother, moves to dismiss this appeal. For the reasons that follow, we deny Mother’s motion and affirm the order of the circuit court.

Father argues that the circuit court’s November 2, 2016 child support order should be revised pursuant to Md. Rule 2-535(b)<sup>1</sup> because it was the product of mistake. Under Rule 2-535(b), mistake means a jurisdictional error regarding the court’s authority to hear the case and not a legal or factual mistake that would otherwise be the basis for an appeal of the judgment. *Claibourne v. Willis*, 347 Md. 684, 692 (1997) (“It is well settled that ‘mistake,’ as used in Rule 2-535(b), is limited to a jurisdictional error[.]”) (citation omitted). There was no mistake within the meaning of Rule 2-535(b) here.

A 2004 Connecticut order required Father to pay \$172 per week in child support. In March of 2016, Mother sought enforcement and modification of the 2004 order in circuit court. Father argued before the circuit court that the parties had agreed in 2007 that he would pay \$31 per week or \$40 per week, depending on which parent claimed the annual child dependency tax credit. Father did not, however, provide a copy of a 2007 court order to prove his claim.

On November 2, 2016, the circuit court entered an order modifying Father’s child support obligation and calculating arrears due from 2007 to 2016 based on the 2004 order.

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<sup>1</sup> Maryland Rule 2-535(b) provides, “[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.”

Of particular importance, the circuit court found that there was no evidence that the 2004 order had been modified by court order in 2007. Father appealed the circuit court’s order, and this Court affirmed.<sup>2</sup>

Father apparently went back to the Connecticut court and obtained a certified court order that purports to show that Father and Mother had agreed to modify child support in 2007,<sup>3</sup> and he presented that order to the circuit court on February 9, 2018. This evidence, however, comes too late. The rules of litigation give each party one chance, and one chance only, to provide evidence to prove a claim.<sup>4</sup> In this instance, Father’s chance to prove the existence of the 2007 modification came during the 2016 litigation that led to the November 2, 2016 order. Today, however, it is too late.

With respect to Father’s allegations of obstruction of justice, we note that there is no civil cause of action in Maryland for obstruction of justice. Father claims that the circuit

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<sup>2</sup> See *Livingston v. Jones*, No. 2255, Sept. Term, 2016 (filed July 21, 2017).

<sup>3</sup> It is a little difficult for us to understand the context that led to the creation of this court order. It is dated November 17, 2016, and therefore, was not created contemporaneously to the alleged 2007 agreement. It creates a child support obligation that is likely insufficient to satisfy the child’s needs. It does not address the issue of arrearages. Because it was not presented to the Maryland courts during the 2016 litigation, however, we need not reach these apparent deficiencies.

<sup>4</sup> This is the legal doctrine of *res judicata*, which prevents the re-litigation of matters that have been decided or could have been decided in an earlier litigation. *Anand v. O’Sullivan*, 233 Md. App. 677, 697 (2017) (“[O]nce litigation is initiated by a party, that party must assert all of its claims that pertain to the particular subject matter of that litigation ... to ensure ... that courts do not waste time adjudicating matters [that] have been decided or could have been decided fully and fairly.”) (citations, emphasis, and quotation marks omitted).

court failed to mail him the arrears judgment before the expiration of the ten-day automatic stay period provided in Rule 2-632(b). Because the circuit court did not deny Father's motion for a stay of execution on timeliness grounds, but considered it and denied it on the merits, Father's allegation, even if true, did not cause him harm.

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