Circuit Court for Harford County
Case No.: 12-C-09-001879 OC

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00236

September Term, 2016

MICHAEL C. WORSHAM

v.

BRIAN K. MacGREGOR, et al.

Meredith,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: August 14, 2018

Michael Worsham, appellant, brought suit in the Circuit Court for Harford County against Brian MacGregor, appellee, and other persons who are no longer involved in this litigation, alleging violations of the federal and Maryland telephone consumer protection acts. The circuit court granted Worsham's unopposed motion for summary judgment against defendant MacGregor. MacGregor, acting pro se, then filed a motion to vacate the circuit court's judgment; the motion was not supported by affidavit. Without providing any explanation, the circuit court granted MacGregor's motion to vacate the summary judgment. MacGregor later filed a motion to dismiss Worsham's complaint against him, and after that motion was granted (and all claims against all other defendants who had been served had been resolved), Worsham appealed.

QUESTIONS PRESENTED

Worsham presents two questions for our review:

1. Whether the Harford County Circuit Court erred in granting MacGregor's Motion to Vacate the Order of Default.

2. Whether the Harford County Circuit Court erred in granting MacGregor's Motion to Dismiss and denying Worsham's discovery motion.

For the reasons explained herein, we conclude that the circuit court erred in vacating the summary judgment order pursuant to MacGregor's motion to vacate. We shall remand the case with instructions to reinstate the judgment previously entered in favor of Worsham against Brian MacGregor.

FACTUAL & PROCEDURAL BACKGROUND

This case arises out of telemarketing calls Worsham received at his residence in Harford County in June 2005. On June 8, 2009, Worsham filed suit in the Circuit Court for Harford County against six individuals whom he alleged were engaged in the "telemarketing and sale of various goods and services, including discount membership programs and calling cards." The six defendants were: Brian MacGregor, Christine MacGregor, Joseph La Rosa, Pranot Sangprasit, William Heichert, and Harijinder Sidhu. Worsham alleged that the defendants had committed violations of the federal Telephone Consumer Protection Act of 1991 ("TCPA") and the Maryland Telephone Consumer Protection Act ("MTCPA").

On November 17, 2009, Worsham moved for an order of default, pursuant to Maryland Rule 2-613(b), as to the five defendants who had been served but had failed to file an answer to his complaint. On December 8, 2009, the circuit court granted Worsham's motion for an order of default against Brian MacGregor, Christine MacGregor, Joseph LaRosa, and Pranot Sangprasit, because those four defendants had "failed to plead as provided in the Maryland rules." (It appears that Harijinder Sidhu was never served. And William Heichert had filed a motion to dismiss on July 31, 2009, prior to the entry of the order of default against the four other defendants.)

On December 16, 2009, counsel for Brian MacGregor and Christine MacGregor filed a motion to vacate the order of default that had been entered against the MacGregors. Although Worsham points out in his brief that "it does not appear that a

ruling was ever entered on [the MacGregors'] Motion to Vacate," a signed order granting the MacGregors' motion appears in the record attached to a letter sent to the parties by Judge William Carr on May 2, 2011.

In the meantime, on April 28, 2010, Worsham and the MacGregors (who were, at that point, represented by counsel) filed a consent motion, which was granted, to stay the proceedings in this case until the Court of Appeals ruled on a certified question of law that had been filed in another pending case to address the statute of limitations for a claim brought under the MTCPA. *See AGV Sports Grp., Inc. v. Protus IP Sols., Inc.*, 417 Md. 386, 389 (2010). In an opinion filed on December 20, 2010, the Court of Appeals held that the MTCPA is not a specialty, and that the twelve-year statute of limitations applicable to specialties does not apply to claims under the MTCPA. *Id*. at 401.

After the Court of Appeals issued its opinion in the *AGV* case, Judge Carr sent the parties a letter on April 4, 2011, summarizing the status of this case. Judge Carr advised that, although the order of default had been vacated with respect to the MacGregors, "no affirmative answer or any other form of response was ever filed subsequent to that." Judge Carr further "suggested that [counsel for the MacGregors] should file the appropriate responses . . . at his earliest convenience."

Counsel for the MacGregors replied to Judge Carr's letter of April 4, 2011, and pointed out that he had not filed an answer on behalf of the MacGregors because there had been no ruling on their motion to vacate the order of default.[1]

But, in a letter dated May 2, 2011, Judge Carr advised that he had "signed on December 31, 2009," an order "vacating the order of default that was entered on December 8, 2009."[2] Noting that there was no indication in the file that the order he had signed on December 31, 2009, had been sent to the parties, Judge Carr provided a copy with his letter, and asked counsel for MacGregor to "file an appropriate responsive pleading to Plaintiff's complaint within fifteen (15) days of the date of this letter." (As it turned out, no answer pursuant to Maryland Rule 2-323 was ever filed by MacGregor.)

On February 1, 2012, the circuit court issued a pre-trial order setting a deadline for discovery to be completed by May 11, 2012, and a deadline for summary judgment motions to be filed by May 18, 2012. On February 17, 2012, Worsham sent MacGregor's counsel interrogatories, requests for production of documents, and a notice of MacGregor's deposition. MacGregor failed to respond to these discovery requests.

[1] During April of 2011, Worsham agreed with counsel for the MacGregors to dismiss Christine MacGregor, and a stipulation confirming her dismissal with prejudice was filed on April 19, 2011. Consequently, all subsequent references in this opinion to "MacGregor" relate to Brian MacGregor only.

[2] The order vacating the order of default that had been entered on December 8, 2009, appears to have been signed on December 31, 2009, and bears a time-date stamp from the clerk indicating that it was filed on January 4, 2010, but it does not appear to have been entered on the docket.

On March 9, 2012, counsel for MacGregor moved to withdraw his appearance on behalf of MacGregor, indicating that counsel had sent MacGregor notice on February 29, 2012, advising him that he would need to "retain another attorney to represent you in this matter or notify the Clerk of the Court in writing of your intention to proceed without an attorney." Counsel's request to withdraw was granted, and an order striking his appearance was filed on April 2, 2012.

On April 16, 2012, Worsham moved for sanctions against MacGregor for failing to respond to Worsham's discovery requests. MacGregor did not respond to Worsham's motion for sanctions. On May 7, 2012, the circuit court sent a letter to MacGregor's last known address notifying him that, "[i]n lieu of immediate sanctions," the court was giving him 21 days to "file responses to the Interrogatories and Request for Production of Documents." (The pre-trial order had required that all discovery be completed by May 11, 2012. MacGregor never responded to Worsham's discovery requests, and the court never ruled on Worsham's motion for sanctions.)

On May 18, 2012, Worsham moved for summary judgment against MacGregor. In support of his motion for summary judgment, Worsham provided an affidavit, in which he declared "under penalty of perjury," that he had "received six pre-recorded voice calls" on his residential telephone line on June 7, 8, 9, and 11, 2005. The calls all "advertised some kind of buying service," but did not provide the names of the callers. He had requested Verizon to trace the six calls, and had received a responding affidavit from Verizon listing the originating phone numbers of the callers as: 866-656-8199, 866-

656-8190, 866-656-9891, and 866-656-9893. The Verizon affidavit was filed with Worsham's motion. Worsham also filed in support of his motion an order from the United States District Court for the Central District of California, in which that court entered summary judgment in favor of the Federal Trade Commission ("FTC") against Brian MacGregor for willful violations of 15 U.S.C. § 6101 *et seq.* Also filed in support of the motion for summary judgment was a portion of a deposition of defendant William Heichert, in which Mr. Heichert testified that he had endeavored to become a telemarketer like Brian MacGregor, with MacGregor's assistance.

MacGregor did not file a response to the motion for summary judgment. On July 12, 2012, the circuit court granted Worsham's motion for summary judgment against MacGregor, and awarded Worsham damages in the amount of $36,000.00. In its Memorandum Opinion, the circuit court explained its decision to grant summary judgment in favor of Worsham against MacGregor:

> [Worsham] alleges the Defendants violated eight provisions of federal and state law while making the telemarketing phone calls. For violation of these provisions, [Worsham] seeks a Judgment from the Court for $36,000 jointly and severally against the Defendants. Plaintiff alleges that the Defendants conspired to make these unsolicited phone calls through their now-defunct companies. All the Defendants' companies were shut down by the Federal Trade Commission (FTC) in 2006. In 2007, a Federal Court in California found MacGregor liable for operating shell companies which engaged in telemarketing fraud. Federal Trade Commission v. Universal Premium Services, Inc., et al., Case #CV-06-0849-SJO(OPx) (U.S.D.C. for the C.D. of Calif.).
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> MacGregor has failed to file a reply to [Worsham's] motion. Since MacGregor did not respond, the Court will accept as true all facts asserted

> by [Worsham] in his motion. In addition, MacGregor has ignored repeated requests by [Worsham] and the Court to respond to the written discovery requests, [de]spite being given an extension by the Court. [Worsham] asserts that MacGregor's telemarketers failed to identify themselves in each call to [Worsham]. As no facts to the contrary have been presented, the Court accepts the facts as plead by [Worsham] and finds that the defendant did violate 47 C.F.R. § 64.1200(d)(4). Under count 2, [Worsham] alleges that MacGregor's telemarketer's failed to transmit both name and number in the caller identification information. Once again, since [Worsham] alleges this violation and MacGregor has failed to dispute it[, t]he Court finds that . . . MacGregor did violate 47 C.F.R. § 64.1601(e)(i). Under count 3, since MacGregor asserts no facts to dispute it, the Court finds that MacGregor's telemarketers failed to have a written do not call policy available on demand and therefore MacGregor has violated C.F.R. § 64.1200(d)(1). Finally under count 4, there are also no facts in dispute and the Court finds that MacGregor failed to honor [Worsham's] specific do not call requests for calls 2 through 6 and has violated 47 C.F.R. § 64.1200(d)(3) and (6).
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> Therefore, [Worsham] is entitled to $27,000 under the Federal TCPA (Count 1: $9,000, Count 2: $9,000, Count 3: $1500, and Count 4: $7,500) from MacGregor[, i]n addition to $9,000 under the Maryland TCPA (Count 5: $3,000, Count 6: $3,000, Count 7: $500, and Count 8: $2,500) from MacGregor.

Although the circuit court signed the order granting Worsham's motion for summary judgment and directing entry of a $36,000 judgment against MacGregor on July 12, 2012, and the face of the order reflects that it was "FILED" with the clerk on July 13, 2012, the order was not "entered" on the docket until August 16, 2012.

On August 28, 2012, the court granted the joint motion of Worsham and Heichert to dismiss Heichert with prejudice.

On September 17, 2012, MacGregor, acting *pro se*, filed a motion captioned "Motion to Vacate Order of Default." Despite the caption referring to an order of default,

the introductory sentence of the motion stated: "Defendant, pursuant to *Rule* 2-535(b), Defendant [sic] moves to vacate the order of default/summary issued against defendant on 07/12/2012."[3]

As grounds for the court to exercise its post-judgment revisory power pursuant to Maryland Rule 2-535(b), MacGregor asserted that "there was no service of process due to a mistaken address." His motion represented that his attorney "was dismissed for ineffective counsel." He further argued that the address of record for him was "in fact a postal box mailing address for Defendant 2, Christine MacGregor." MacGregor further asserted that he and Christine MacGregor "obtained a final legal separation in 2006." In his motion, MacGregor also provided an address in Nevada for future correspondence. Finally, MacGregor argued: "Wherefore, there is a substantial and sufficient basis for an actual controversy as to the merits of an action and it is equitable to excuse defendant's failure to plead or answer discovery, the Court should vacate the order of default and permit [MacGregor] to respond to the complaint." None of the assertions of fact contained within MacGregor's motion were supported by affidavit or any other supporting documentation.

[3] As mentioned above, although the docket does not reflect that an order vacating MacGregor's 2009 order of default was filed, a signed order to that effect *does* appear in the record as an attachment to Judge Carr's May 2, 2011 letter. And, although MacGregor failed to file an affirmative answer to Worsham's complaint, Worsham never filed a subsequent request for entry of another order of default.

On September 21, 2012, Worsham filed an opposition to MacGregor's motion to vacate. Among the reasons Worsham provided for denying the motion was the lack of any supporting affidavit; Worsham argued in the opposition:

> Rule 2-311 requires that a motion "that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based." MacGregor's Motion contains purported facts about (1) ineffective counsel . . . that are not in the record, and suspect on their face given [MacGregor's prior counsel's] reputation, and (2) additional factual assertions that "there is a substantial and sufficient basis for an actual controversy as to the merits." [Citation omitted.]
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> MacGregor failed to provide or introduce a sworn Affidavit, or any documents to support his new factual assertions, which are not in the record, that his counsel allegedly failed to update MacGregor's address, or of an alleged substantial basis of an actual controversy on the merits. In fact, the exact opposite facts are in the record.

Although MacGregor did not reply to Worsham's opposition, and filed no affidavit in support of his motion to vacate (or in opposition to the motion for summary judgment), the circuit court, without any explanation, wrote "motion granted" on the face of MacGregor's motion on October 6, 2012. The ruling was docketed October 9, 2012.

On January 7, 2013, MacGregor filed a motion to dismiss the complaint. Again, MacGregor's motion was not supported by any affidavit.

After further delays in the case, the circuit court held hearings on open motions on November 25 and December 22, 2015. At the conclusion of the hearing on November 25, 2015, the court granted Worsham's motion for judgment against defendants LaRosa and Sangprasit, and entered judgment against them in the amount of $35,600, jointly and severally.

At the conclusion of the hearing on December 22, 2015, without ruling on Worsham's discovery motion, the circuit court granted MacGregor's motion to dismiss, and issued an order dismissing the complaint against Brian MacGregor with prejudice. With respect to the claims against MacGregor, the motions judge explained:

> Okay. Defendant Brian K. MacGregor has come before the Court today having filed a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to the Maryland Rule 2-324(a). The complaint itself alleges violations of the TCPA, section 227(b)(3). And I certainly agree with Mr. Worsham that, that that particular statute provides for a private right of access [sic]. No question about it in my mind. However, having listened to the argument of everyone today, I grant the motion to dismiss with prejudice believing that there is a failure to state a claim upon which relief may be granted and the case is dismissed with prejudice. I'm going to sign the order now. It is – what is the today [sic]? 22nd? That makes the motion for any discovery violations moot.

On January 4, 2016, Worsham timely moved to alter or amend the circuit court's dismissal of his complaint (which order had been docketed on December 29, 2015). On March 28, 2016, the circuit court denied Worsham's motion to alter or amend.

On April 5, 2016, Worsham filed his notice of this appeal.[4]

[4] The order entered in favor of Brian MacGregor on December 29, 2015, disposed of all claims against all defendants who had been served in this case. *See Turner v. Kight*, 406 Md. 167, 172 n.3 (2008), in which the Court of Appeals explained: "[A] 'named defendant who has not been served is not a party for the purpose of determining a final judgment' and . . . , if the judgment entered by the court disposes of all claims against all persons over whom the court has acquired jurisdiction, the judgment is final without a certification under Rule 2-602(b)" (quoting *State Highway Admin. v. Kee*, 309 Md. 523, 529 (1987)).

DISCUSSION

I. MacGregor's September 17, 2012 Motion to Vacate

As outlined above, after the court granted Worsham's motion for summary judgment against MacGregor and that judgment was entered on the docket on August 16, 2012, MacGregor filed a "Motion to Vacate Order of Default" on September 17, 2012. Worsham's main argument on appeal is that MacGregor's motion to vacate that judgment was improperly granted because it was wholly unsupported by affidavit or other documentation. Worsham asserts that not even one of the reasons MacGregor set forth in his motion to vacate was "supported by affidavit and accompanied by any papers on which it is based" as required by Maryland Rule 2-311(d).[5]

Worsham points out that MacGregor claimed in the motion to vacate that he was unable to receive correspondence from the circuit court or Worsham because MacGregor's counsel never updated MacGregor's address as requested. As Worsham

[5] Rule 2-311 provides, in pertinent part:

> **(c) Statement of Grounds and Authorities; Exhibits.** A written motion and a response to a motion shall state with particularity the grounds and the authorities in support of each ground. A party shall attach as an exhibit to a written motion or response any document that the party wishes the court to consider in ruling on the motion or response unless the document is adopted by reference as permitted by Rule 2-432(b) or set forth as permitted by Rule 2-432(b).
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> **(d) Affidavit.** A motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.

notes, this assertion of a fact not contained in the record was not supported by an affidavit. Similarly, Worsham observes that MacGregor's assertion that his attorney was dismissed by MacGregor for "ineffective assistance" of counsel is not a matter of record; furthermore, Worsham asserts that MacGregor's claim in this regard is "suspect at best and contradicted by several facts and observations." Worsham further observes that MacGregor failed to provide his phone number on the motion in direct violation of Maryland Rule 1-311(a).[6]

MacGregor argues, in response, that the circuit court's grant of his motion was proper. He argues that his own attorney failed to "update the Court on the address to send further documents" after striking his appearance. MacGregor contends:

> The basis of MacGregor's Motion to Vacate the Order of Default was the failure of [Worsham] to properly serve MacGregor, not by [Worsham's] fault, but by [MacGregor's then counsel's] failure to update the Court of MacGregor's mailing address. Since MacGregor never got any correspondence from [his own attorney], he was unaware the change hadn't been made. Therefore, he had never been served any Motions to hold him in contempt nor any Motions or Orders of default.

In his brief, MacGregor emphasizes his "*pro se* status," and claims he "knows little about the law in general and nothing about Maryland law and procedure." He refers to his "*pro se*" status multiple times in his brief. For example, he claims that, after he received notice of the judgment against him (which is something that is never clearly explained), he "demonstrated good cause by virtue of the fact that he had been subject to

[6] Rule 1-311(a), provides, in pertinent part: "Every pleading or paper filed shall contain (1) the signer's address, telephone number, facsimile number, if any, and e-mail address, if any, ..."

insufficient counsel and his address was not registered with the Clerk's Office as was requested of MacGregor's attorney." He asserts: "MacGregor sought to complete his case as a *pro se* litigant and, being out of state and unsophisticated in legal matters, he was entitled to some leniency by the Court in regards to his filing of the Motion." With respect to the fact that he did not support his motion with any affidavit, MacGregor claims:

> Worsham continues by nitpicking at matters which have no substantive value such as a missing sworn statement, explanation of how MacGregor received his mail, etc. This information was not relevant nor substantial enough to adversely impact the final order had the information been submitted. As a *pro se* litigant, while MacGregor is required to follow format and procedure, he is entitled to some leniency by the Court for infractions which do not substantially impact the case itself and the ultimate final decision.

And, later in his brief, he makes a similar point about his status as a *pro se* litigant:

> MacGregor is a *pro se* litigant. He did not have easy access to the court record, being at least two thousand miles from the court, or more, at any given time. He did not have an attorney or courier to help him with getting necessary documents, research, and record excerpts. In addition, he does not know much about the law and was compelled to learn what he could, far from a Maryland law library, about the procedures and rules governing Maryland civil matters. There are so many requirements it is difficult for an unsophisticated layperson to keep track of everything whilst doing so from many miles away and without a proper legal support system. The Court calls for leniency for *pro se* litigants. Failing to swear his motion or provide a supporting affidavit is likely not an uncommon mistake amongst self-represented individuals, and as the court record itself supports MacGregor's claims in his Motion to Vacate, it is unreasonable to assume that this error was irreversible and, as an individual error, detrimental to Worsham's case as a whole. . . . .

But, as we stated in *Dep't of Labor, Licensing & Regulation v. Woodie*, 128 Md. App. 398, 411 (1999): "It is a well-established principle of Maryland law that *pro se*

parties must adhere to procedural rules in the same manner as those represented by counsel." *See also Pickett v. Noba, Inc.*, 122 Md. App. 566, 568 (1998) ("While we recognize and sympathize with those whose economic means require self-representation, we also need to adhere to procedural rules in order to maintain consistency in the judicial system."). MacGregor's choice to proceed *pro se* after his attorney withdrew from the case was not a reason for the court to excuse MacGregor's lack of compliance with Maryland rules of procedure.

Although MacGregor's motion was captioned "Motion to Vacate Order of Default," the introductory sentences in MacGregor's motion state: "Defendant, pursuant to *Rule* 2-535(b), Defendant moves to vacate the order of default/summary issued against defendant on 07/12/2012. As grounds, defendant states there was no service of process due to a mistaken address." Because the motion states that it was filed "pursuant to Rule 2-535(b)," we will treat MacGregor's motion as a motion to revise the order signed on July 12, 2012, in which the court ordered that Worsham's motion for summary judgment was granted and that a judgment in the amount of $36,000 "shall be entered against Brian K. MacGregor."

Rule 2-535(b) provides: "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." The Court of Appeals has held: "The terms 'fraud, mistake, or irregularity' as used in Rule 2-535(b) and its predecessor, Rule 625(a), are narrowly defined and are to be strictly applied." *Early v. Early*, 338 Md. 639, 659 (1995). In addition, the Court of

Appeals has held that, in order for the court to exercise its revisory power under Rule 2-535(b), there must be clear and convincing evidence of "fraud, mistake, or irregularity," good faith and due diligence on the part of the movant, as well as a meritorious defense:

> A court, however, will only exercise its revisory powers if, in addition to a finding of fraud, mistake, or irregularity, or failure of an employee of the court or of the clerk's office to perform a duty required by statute or rule, **the party moving to set aside the enrolled judgment has acted with ordinary diligence, in good faith, and has a meritorious defense or cause of action. Moreover, it is well established that there must be clear and convincing evidence of the fraud, mistake, or irregularity before a movant is entitled to have a judgment vacated under Rule 2-535(b)**.

Tandra S. v. Tyrone W., 336 Md. 303, 314 (1994) (internal citations omitted) (superseded by statute on other grounds) (emphasis added).

In *Peay v. Barnett*, 236 Md. App. 306, 315-16 (2018), we summarized the standard of review applicable to rulings on motions to revise a judgment pursuant to Rule 2-535(b):

> Typically, we review the circuit court's decision whether to grant a motion to revise a judgment pursuant to Md. Rule 2–535(b) under an abuse of discretion standard. *See* Rule 2–535(b); *Wells v. Wells*, 168 Md. App. 382, 394, 896 A.2d 1082 (2006) ("The existence of a factual predicate of fraud, mistake, or irregularity, necessary to support vacating a judgment under Rule 2–535(b), is a question of law. If the factual predicate exists, the court's decision on the motion is reviewed for abuse of discretion.") (Citation omitted).

(Footnotes omitted.) *See also Davis v. Attorney General*, 187 Md. App. 110, 124 (2009) ("We review a circuit court's determination of whether there was fraud, mistake, or irregularity for clear error and legal correctness.")

In this case, MacGregor provided no evidence to support vacating the judgment for any reason, let alone clear and convincing evidence of fraud, mistake, or irregularity. As noted above, none of the statements in MacGregor's motion were supported by affidavit or other documentation, as required by Rule 2-311(d). In *Scully v. Tauber*, 138 Md. App. 423, 431 (2001), this Court held that facts set forth in a motion that does not comply with Rule 2-311(d) are not "appropriately before the court." We stated: "**The motions court had no right to consider any 'fact' set forth by appellee in his opposition due to appellee's failure to comply with Rule 2-311(d).**" *Id*. (emphasis added).

The lack of supporting affidavit is particularly significant in this case because the judgment that MacGregor was seeking to vacate was entered pursuant to a motion for summary judgment as to which MacGregor had filed no opposition. In MacGregor's motion to vacate, he did not address the merits of Worsham's claim other than making the conclusory assertion that "there is a substantial and sufficient basis for an actual controversy as to the merits of an action and it is equitable to excuse defendant's failure to plead or answer discovery." And MacGregor's motion to vacate acknowledged that MacGregor had not answered discovery, which he blamed on "ineffective service of process," even though he was represented by counsel in the case for literally years.

As mentioned above, the ordinary rule in cases in which a defendant files a motion to vacate a judgment pursuant to Rule 2-535(b) is that "[a] court . . . will only exercise its revisory powers if, in addition to a [clear and convincing] finding of fraud, mistake, or

irregularity . . . the party . . . has acted with ordinary diligence, in good faith, and has a meritorious defense of cause of action." *Tandra S.*, *supra*, 336 Md. at 314. Here, the court provided no explanation for granting MacGregor's motion, and, as we have explained above, the motion itself provided no adequate grounds for relief. Aside from the lack of affidavit, which was a fatal deficiency, MacGregor had not demonstrated ordinary diligence, good faith, or a meritorious defense. Despite several years of litigation and multiple reminders from the circuit court, MacGregor never filed an answer to Worsham's complaint pursuant to Maryland Rules 2-321 and 2-323. After Worsham served discovery requests upon MacGregor in 2012, MacGregor failed to respond. When Worsham filed a motion for summary judgment against defendants including MacGregor, MacGregor failed to timely respond to Worsham's motion for summary judgment, and, even when he asked the court to exercise revisory power over the judgment, MacGregor did not provide information that was adequate to serve as a response opposing a motion for summary judgment pursuant to Maryland Rule 2-501.[7]

[7] Rule 2-501 requires a party opposing a motion for summary judgment to identify "with particularity" each fact in dispute, and support the response with an affidavit or other written statement under oath. The rule states, in pertinent part:

> **(b) Response.** A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the

continued…

Accordingly, the circuit court erred in granting MacGregor's motion to vacate on October 9, 2012, and we will remand the case to the circuit court for reinstatement of the judgment that was previously entered against Brian MacGregor in favor of Worsham on August 16, 2012 (*i.e.*, as ordered by the circuit court on July 12, 2012).

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY VACATED AS TO APPELLEE BRIAN MACGREGOR. CASE REMANDED TO THE CIRCUIT COURT FOR HARFORD COUNTY WITH INSTRUCTIONS TO REINSTATE THE JUDGMENT THAT WAS PREVIOUSLY ENTERED IN FAVOR OF WORSHAM AGAINST BRIAN MACGREGOR ON AUGUST 16, 2012. COSTS TO BE PAID BY APPELLEE.

continued…

> record shall be supported by an affidavit or other written statement under oath.
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> **(c) Form of Affidavit.** An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.