

Circuit Court for Frederick County
Case No.: C-10-CV-21-000251

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 240

September Term, 2022

THOMAS PANDOLFI

v.

SHARON TERMINI

Nazarian,
Ripken,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 28, 2022

*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.

Thomas Pandolfi, appellant, appeals from a trio of orders by a duo of courts. The first—issued by the Circuit Court for Montgomery County—transferred his case to another venue. The second and third—issued by the Circuit Court for Frederick County—set an amount of attorney’s fees he owed and denied his motion to vacate that award. For the following reasons, we shall affirm all three orders.

BACKGROUND

In January 2021, Pandolfi sued his ex-wife Sharon Termini, appellee, in the Circuit Court for Montgomery County for breach of contract and “Tortious Interference with Prospective Advantage.” The Complaint included a Washington, D.C. address as Pandolfi’s place of residence and a Frederick County residential address for Termini. On that basis, Termini filed a motion to transfer the case to her domicile. In May, the Circuit Court for Montgomery County granted Termini’s motion. The transfer to Frederick County was completed about a month later.

Shortly after the case was transferred, Pandolfi’s counsel filed a motion to withdraw his appearance, which the court granted on August 17. In tandem with entry of that order, the clerk mailed Pandolfi a Notice to Employ New Counsel to his Washington, D.C. address. The notice cautioned Pandolfi that “[w]ithout legal counsel, [he] face[d] the risks of dismissal, judgment by default, and assessment of court costs against [him].” It also instructed Pandolfi that he “must inform the Clerk of any change of [his] address.”

While his counsel’s motion to withdraw was pending, Pandolfi, *pro se*, filed a motion requesting an extension of the discovery deadline. The court granted him an additional 60 days. The day after that discovery order was entered, Termini filed a Motion

to Compel Written Discovery. Termini certified that she served the motion both via U.S. mail, first class, postage prepaid to Pandolfi’s Washington, D.C. address and via email. On September 22, the court granted Termini’s motion and ordered Pandolfi to serve his responses to Termini’s Interrogatories and document requests within ten days.

Then, on October 12, Termini filed a motion to strike or dismiss the Complaint based on Pandolfi’s continued failure to provide discovery responses. The motion also sought an award of attorney’s fees. Termini certified that she served the motion via U.S. mail, first class, postage prepaid to a different Washington, D.C. address than the one listed in the Complaint but one she still believed was associated with Pandolfi, as well as via email.

A week later, Pandolfi filed a motion to vacate the order compelling his discovery responses. The motion did not include Pandolfi’s address. Pandolfi also did not file a response to Termini’s motion to strike or dismiss the Complaint. Termini filed an opposition that she certified was served only via email. In her certificate of service, Termini stated that the opposition could not be mailed because Pandolfi’s “last know[n] address [was] a vacant building.”

On November 1, the circuit court denied Pandolfi’s motion to vacate. The same day, Termini filed a line notifying the clerk that the address the court had on file for Pandolfi was in fact a vacant building. Termini also detailed her unsuccessful attempts to find an alternative address for Pandolfi and attached two emails from her attorney to Pandolfi notifying him of the address issue and reminding him of his obligation to update the court. Termini certified that she served the line via email only.

The clerk mailed Pandolfi both the order denying his motion to vacate and a notice of a hearing on Termini’s motion to strike or dismiss the Complaint. Both were sent to the Washington, D.C. address Pandolfi listed as his residence in the Complaint. Both were returned as undeliverable.

On December 14, after a hearing the day before at which Pandolfi was absent, the circuit court entered an order granting Termini’s motion, dismissing the Complaint, and awarding Termini attorney’s fees. The order reserved on the amount of fees to allow Termini a chance to file supplemental documentation detailing the costs she had incurred. She did so soon after and certified that she served the supplements via U.S. Mail, first class, postage prepaid to Pandolfi at a Virginia address. A few days later, Termini filed a duplicative motion for sanctions seeking attorney’s fees, which she certified as served on Pandolfi via email.

Again, the clerk mailed Pandolfi a notice of the hearing date on the amount of attorney’s fees to his Washington, D.C. address. Again, it was returned as undeliverable.¹ And again, Pandolfi was absent at the hearing. Consequently, on March 9, 2022, the court entered an order setting the amount of attorney’s fees Pandolfi owed.²

Nine days later, Pandolfi informed the court of his correct address, a residence in Virginia at which Termini had previously sent him mail. He also filed a motion to vacate

¹ The same day the court docketed Pandolfi’s returned mail, it also mistakenly docketed two other pieces of returned mail from unrelated cases. The clerk promptly corrected this error, and it has no bearing on this case.

² The clerk mailed Pandolfi a copy of this order too, but it was also later returned as undeliverable.

the award of attorney’s fees on the grounds that he never received notice of the predicate hearing. The circuit court denied his motion on March 23. Pandolfi noted this appeal on April 7.³

DISCUSSION

Pandolfi asks us to answer three questions:

- (1) Did the Circuit Court for Montgomery County err when it transferred the case?
- (2) Did the Circuit Court for Frederick County err by setting the amount of attorney’s fees Pandolfi owed in its March 9 Order?
- (3) Did the Circuit Court for Frederick County err by denying Pandolfi’s motion to vacate?⁴

We will address each in turn.

First, Pandolfi waived his right to challenge the change of venue by failing to timely note his appeal. An order transferring a case to another county is an immediately appealable final judgment because it “terminates the litigation in the transferring court.” *DiNapoli v. Kent Island, LLC*, 203 Md. App. 452, 470 (2012), *rev’d on other grounds*, 430 Md. 348 (2013). That said, a party can choose either to appeal the transfer order immediately or to wait for the transferee court’s final judgment. *Id.* Even so, the party must still file their notice of appeal within thirty days after the entry of the transferee court’s final judgment.

³ The day after the circuit court denied his motion, Pandolfi filed a “Supplemental Motion to Vacate.” That motion was denied two weeks after Pandolfi noted his appeal. Accordingly, the circuit court’s ruling on the Supplemental Motion to Vacate is not properly before us.

⁴ Pandolfi does not present these questions in his brief, but they are a summation of his arguments on appeal. Notably, Pandolfi does not appear to contest the merits of the circuit court’s ruling dismissing his case.

Id.; Md. Rule 8-202(a). Here, the Circuit Court for Frederick County dismissed Pandolfi’s suit on December 14, 2021. Pandolfi did not note this appeal until more than 100 days later. The later filings and proceedings about attorney’s fees did not toll the time for appeal. *See Dent v. Simmons*, 61 Md. App. 122, 130 (1985) (concluding that a request for attorney’s fees is “collateral to the main cause of action”). Because Pandolfi failed to file his notice within 30 days of the transferee court’s final judgment, he waived his right to challenge the transfer.

Pandolfi faces a similar waiver issue with regard to the March 9 Order. This order deals only with the amount of attorney’s fees awarded; not whether the award was justified. Whether to award attorney’s fees was decided in the December 14 Order. Pandolfi’s only argument on the amount of fees awarded is an accusation that Termini’s counsel represented her *pro bono*, and she therefore did not incur any fees. Without addressing the merits of this argument, we note that Pandolfi did not appear at the hearing that preceded the March 9 Order to contest the amount of fees. Nor did he file any opposition to the affidavits and other supporting documentation filed by Termini’s counsel attesting to the amount and reasonableness of the fees. “An objection cannot be made for the first time upon appeal.” *B.O. v. S.O.*, 252 Md. App. 486, 519 (2021) (quotation marks and citations omitted). By failing to object in the circuit court when he had the opportunity, Pandolfi waived his right to seek review of the March 9 Order on appeal. *See Halloran v. Montgomery Cnty. Dep’t of Pub. Works*, 185 Md. App. 171, 201 (2009). *See also* Md. Rule 8-131(a).

Finally, Pandolfi asserts that he in fact did *not* have the opportunity to object to either of the circuit court’s orders because he never received copies of Termini’s motion or notice of the hearings. Pandolfi argues that the circuit court should have vacated the December 14 and March 9 Orders because he never received notice of the predicate hearings due to fraud committed by Termini.⁵ We review the circuit court’s refusal to vacate its judgment for abuse of discretion. *Das v. Das*, 133 Md. App. 1, 15 (2000).

Rule 2-535 gives a circuit court the ability to exercise “revisory power and control over [a] judgment in case of fraud, mistake, or irregularity.” In the context of this rule, “mistake” means a jurisdictional mistake, which is not relevant here. *Facey v. Facey*, 249 Md. App. 584, 639 (2021). Regarding fraud, only extrinsic fraud justifies vacating an enrolled judgment. *Bland v. Hammond*, 177 Md. App. 340, 351 (2007). This type of fraud occurs “when it actually prevents an adversarial trial[.]” *Id.* “[F]raud or deception practised [sic] on [a party] by [their] opponent, as by keeping [them] away from court,” qualifies as extrinsic fraud. *Id.* (quoting *United States v. Throckmorton*, 98 U.S. 61, 65–66 (1878)). Similarly, examples of an irregularity include a defect in process or proceeding and a dismissal without notice. *J.T. Masonry Co., Inc. v. Oxford Constr. Servs., Inc.*, 74 Md. App. 598, 607 (1988). To prevail on a motion to vacate based on extrinsic fraud or irregularity, the moving party must show fraud or irregularity by clear and convincing evidence. *Facey*, 249 Md. App. at 601. We do not find that here.

⁵ Pandolfi does not use the term “fraud” but instead accuses Termini of “false claims that service was provided.”

The record here shows that Pandolfi’s own failure to keep himself informed on the status of his case and to keep the circuit court updated of his address caused him to miss the hearings that preceded the court’s orders. The rules on a party’s duties in the midst of litigation are clear. First, they must keep themselves informed as to the progress of their case. Second, they have “a continuing obligation to furnish the court with [their] most recent address.” *Das*, 133 Md. App. at 19–20 (quotation marks and citation omitted). Pandolfi knew this case was ongoing. He had participated in it prior to the motion that produced these orders. The clerk also notified him of his duty to keep his address updated with the court. We also note that, before either hearing was scheduled, Termini’s counsel twice reminded Pandolfi via email to update his address with the circuit court. His failure to do so was neither fraud by Termini nor an irregularity. *See id.* at 19–20. *Compare with J.T. Masonry Co.*, 74 Md. App. at 611–12 (finding an irregularity where the clerk’s error of sending a hearing to the wrong address after a party attempted to update it with the court caused the party to miss the hearing). We therefore conclude the circuit court did not abuse its discretion in denying Pandolfi’s motion to vacate.

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