

Circuit Court for Baltimore County
Case No. C-03-FM-21-005366

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0254

September Term, 2022

ASHWANI KUMAR

v.

AMARJEET KAUR

Leahy,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: November 14, 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.

This is an appeal from the Circuit Court for Baltimore County. In January 2022, Appellee appeared remotely, via Zoom, for an Uncontested Divorce Hearing before a magistrate. In February 2022, a circuit court judge accepted the recommendations of the magistrate and granted a Judgment of Absolute Divorce. Less than a month later, Appellant filed a Joint Motion to Alter or Amend the Judgment, which was struck by the court. The parties then refiled their Motion to Alter or Amend and on March 10, 2022, the court denied the Motion. Appellant, Ashwani Kumar, appeals the denial of the Joint Motion and presents the following question, that has been consolidated and rephrased, for our review:¹

1. Did the Circuit Court err or abuse its discretion in denying the Joint Motion to Alter or Amend the Judgment of Absolute Divorce?

For the following reasons, we shall vacate the judgment denying the motion for reconsideration and remand to the circuit court.

BACKGROUND

Ashwani Kumar, Appellant, and Amarjeet Kaur, Appellee, were married in October 2004. On October 14, 2021, Appellant filed a Complaint for an Absolute Divorce and the parties separated. Appellant’s Complaint requested, “the Court enter a Judgment of

¹ Appellant’s original questions presented are stated as follows:

Whether the Court was correct in holding that it had “no legal authority to set aside the Judgment of Absolute Divorce signed more than thirty (30) days ago.”

Whether the court abused its discretion in denying the Motion to Alter or Amend Judgment without a hearing.

Absolute Divorce on the grounds of mutual consent[.]” The parties attached a Voluntary Separation and Property Settlement Agreement to the complaint, which they signed on October 9, 2021. The Agreement provides, in part:

WHEREAS, since May 01, 2007, differences have arisen between the parties and they are in agreement that they do not wish to be married; now, therefore, they voluntarily and by mutual consent enter this Agreement with the purpose and intent of ending their marriage[.]

* * *

The parties mutually agree that in entering into this Agreement, each party signs this Agreement freely and voluntarily for the purpose and with the intent of fully settling and determining all of their respective rights and obligations growing out of or incident to their marriage.

On January 21, 2022, Appellee appeared remotely via Zoom for an Uncontested Divorce Hearing before a magistrate. The magistrate issued a report, recommending that a Judgment of Divorce be granted, alimony be denied based on mutual waiver, the agreement be incorporated, and the costs be equally divided pursuant to the terms of the agreement. The circuit court, on February 1, 2022 granted a Judgment of Divorce Absolute, in accordance with the recommendations.

On March 1, 2022, the parties filed a Joint Motion to Alter or Amend the Judgment of Absolute Divorce. The parties stated that they had reconciled; that both parties are originally from India and did not fully appreciate how divorce would affect their family; and that they did not wish to be divorced. On March 2, 2022, the Court struck the parties Joint Motion to Alter or Amend for non-compliance due to a lack of certificate of service as required by Rule 20-201(g). On March 6, 2022, the parties refiled their Joint Motion with the appropriate certificate of service.

A circuit court judge then denied the motion, by Order, stating:

This Court having read and considered Plaintiff’s Joint Motion to Alter or Amend Judgment of Absolute Divorce, the Motion cites no legal authority for the Court to set aside the Judgment of Absolute Divorce signed more than thirty (30) days ago; therefore, it is the 8th day of March, 2022, by the Circuit Court for Baltimore County,

ORDERED, that Plaintiff’s Joint Motion to Alter or Amend Judgment of Absolute Divorce is DENIED.

Appellant timely appealed.

STANDARD OF REVIEW

When reviewing a circuit court's decision “to deny a request to revise its final judgment,” we do so under an abuse of discretion standard. *Pelletier v. Burson*, 213 Md. App. 284, 289 (2013). The burden upon the party moving for reconsideration is a heavy one, as the judge need not revisit the merits after he has already made a decision. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). “Above and beyond arguing the intrinsic merits of an issue, [the moving party] must also make a strong case for why a judge, having once decided the merits, should in his broad discretion deign to revisit them.” *Id.* at 484-85. “[A] [p]ost-trial motion to reconsider is not a time machine in which to travel back to a recently concluded trial in order to try the case better with hindsight” *Id.* at 484.

A “court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.” *Arrington v. State*, 411 Md. 524, 552 (2009); see also *Alston v. Alston*, 331 Md. 496, 504 (1993) (noting “even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal standards”). The Court of Appeals has recognized that trial courts do not have discretion

to apply incorrect legal standards and that “a failure to consider the proper legal standard in reaching a decision constitutes an abuse of discretion.” *Wilson-X v. Dep’t of Hum. Res.*, 403 Md. 667, 675-76 (2008) (citations omitted); see also *Bass v. State*, 206 Md. App. 1, 11 (2012) (stating that it is an abuse of discretion to exercise discretion based upon an error of law).

An abuse of discretion occurs when the court acts “without reference to any guiding rules or principles[,]” *North v. North*, 102 Md. App. 1, 13 (1994) or “the ruling under consideration is clearly against the logic and facts and inferences before the court.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997). For a reversal, the judgment of the trial court must be “beyond the fringe of what the court deems minimally acceptable.” *Id.* “With respect to the denial of a Motion to Alter or Amend . . . the discretion of the trial judge is more than broad; it is virtually without limit.” *Steinhoff*, 144 Md. App. at 484.

DISCUSSION

Maryland Rule 2-534 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.

Under Md. Rule 2-535(a):

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.

In addition, Maryland Rule 2-535(b) provides that “[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.” Our courts have “narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity, in order to ensure finality of judgments.” *Thacker v. Hale*, 146 Md. App. 203, 217 (2002). “The existence of fraud, mistake, or irregularity must be shown by ‘clear and convincing evidence.’” *Davis v. Att’y Gen.*, 187 Md. App. 110, 123-124 (2009) (quoting *Das v. Das*, 133 Md. App. 1, 18 (2000)).

In the present case, initially, the court, pursuant to Md. Rule 20-203(c), struck the motion to alter or amend, which we construe as a motion to revise the judgment of absolute divorce, due to a lack of certificate of service as required by Rule 20-201(g).² Appellant then filed an amended motion with the proper certification. Appellant argues the court erred in denying his second motion because his refiled motion relates back to the filing of the rejected submission and was filed less than 30 days after the judgment was entered.

To be sure, Maryland Rule 20-203(a)(2) states, “a refiled submission shall relate back to the filing of the rejected submission.” Thus, Appellant’s second motion, which was filed more than 30 days after the entry of the judgment, relates back and is deemed to have been filed 28 days after the judgment. The court order here provided, “the Motion

² Other than an original pleading that is served by original process, each submission that is required to be served pursuant to Rule 20-205(d) shall contain a certificate of service signed by the filer. Md. Rule 20-201(g)(1).

cites no legal authority for the Court to set aside the Judgment of Absolute Divorce signed more than thirty (30) days ago...”

As noted, under Maryland Rule 2-535(b), a motion filed more than 30 days after a judgment has been entered, can be revised only upon a finding of fraud, mistake or irregularity. A motion filed less than 30 days after the entry of a judgment is subject to a court’s discretionary reconsideration under Rule 2-535(a). Because we are unable to determine whether the court’s denial was based on Rule 2-535(a) or Rule 2-535(b), we remand for further clarification.

The court, however, on remand is not required to hold a hearing, if it chooses to exercise its revisory power. The Court of Appeals clarified the procedure that is required in granting a Md. Rule 2-535 motion, stating:

Unlike Rule 2–534, Rule 2–535 is not specifically referenced in Rule 2–311 and, thus, even though it too addresses the court's revisory power, permitting the court to “take any action that it could have taken under Rule 2–534,” a motion pursuant to it does not require a hearing to be granted. Nor are motions filed pursuant to Rule 2–535 limited to actions decided by the court and filed within ten days after entry of judgment.

Miller v. Mathias, 428 Md. 419, 441 (2012).

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY VACATED
AND THE CASE REMANDED FOR
FURTHER PROCEEDINGS IN
ACCORDANCE WITH THIS OPINION.
COSTS TO BE DIVIDED EQUALLY
BETWEEN THE PARTIES.**