

Circuit Court for Prince George's County
Case No.: CAD19-32798

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 255

September Term, 2023

FERDINAND HOUNLEKPO

v.

NASSITA HOUNLEKPO

Reed,
Tang,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: March 19, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Ferdinand Hounlekpo (“Husband”), appellant, and Nassita Hounlekpo (“Wife”), appellee,¹ were divorced in the Circuit Court for Prince George’s County. In this appeal, Husband raises six issues, which we have combined and rephrased as one:²

Did the circuit court err or abuse its discretion by denying Husband’s motion to vacate the judgment of absolute divorce based on extrinsic fraud?

For the reasons below, we affirm the order of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Husband and Wife married in 2010 and had two children together. They separated on September 2, 2019, when Wife moved out of the marital home in Prince George’s County and moved to St. Mary’s County with the children.

Days later, Wife filed a complaint for limited divorce in the Circuit Court for St. Mary’s County (Case No. C-18-FM-19-000718). The following month, Husband filed a complaint for limited divorce in the Circuit Court for Prince George’s County (Case No. CAD19-32798). Husband moved to dismiss Wife’s complaint for improper venue, and the St. Mary’s County case was ultimately transferred to the Circuit Court for Prince George’s

¹ Wife did not file a brief in this Court.

² The issues presented by Husband are captioned:

1. Breach of contract and St. Mary court magistrate’s findings
2. Miscalculation of arrear, actual Child Support, and Alimony
3. Fabricated Grounds of Divorce
4. Miscalculation of properties and allegation of dissipation of funds
5. Child Custody and Best Interest of Children
6. Lack of due process in Contempt of Court

As explained later, the sole issue before us is whether the court erred by denying Husband’s motion to vacate the judgment of absolute divorce.

County (Case No. CAD20-00554). The two cases were consolidated under Husband’s case (Case No. CAD19-32798).

Merits Hearing

At a two-day merits hearing on September 22 and 23, 2020, Husband and Wife, represented by counsel, testified and called character witnesses. As pertinent, the evidence demonstrated that at the beginning of September 2019, Husband traveled to Africa to visit his mother. He gave Wife a credit card in his name to buy food and treats for the children. Wife used the credit card to repair a vehicle she drove and later, after the vehicle broke down again, to make a \$3,500 down payment on a used car and other purchases.

While Husband was in Africa, Wife moved out of the marital home and into a house she had purchased in St. Mary’s County months earlier. Husband discovered that Wife and the children had moved out when he returned from Africa at the end of September. Husband canceled the credit card and filed theft charges against Wife.

In October 2019, the parties signed an agreement in which Husband agreed to dismiss the theft charges against Wife and accept liability for \$6,000 in “unauthorized debt” in exchange for Wife’s agreement to dismiss her pending complaint for divorce. The agreement provided that Husband and Wife would dismiss their pending complaints for limited divorce and that Husband would file a complaint for absolute divorce on the grounds of mutual consent in Prince George’s County. If either party violated the agreement, they would be liable for the other party’s attorney’s fees, for \$25,000 for “emotion and stress caused[.]” and would “relinquish all rights of filing for the sole custody of the children and access to the marital property[.]” Wife testified that she only signed the

agreement because of the criminal charges, which she was fearful would impact her ability to maintain employment.

Judgment of Absolute Divorce

On February 3, 2021, the circuit court entered a memorandum opinion and judgment of absolute divorce. As pertinent to the issue on appeal, in its memorandum opinion, the circuit court made the following findings about the “alleged credit card fraud” and the agreement. It found that Husband gave Wife a credit card to purchase food and for emergencies during his trip to Africa; that Wife used it to pay for \$2,896.45 in repairs to the vehicle she drove; that after the car broke down again, Husband told Wife not to make any further repairs; that Wife then used the credit card to make a \$3,500 down payment on a used car; that upon his return from Africa, Husband filed theft charges against Wife based on her alleged unauthorized use of the credit card; and that Husband coerced Wife to sign the agreement in exchange for him dismissing the theft charges.

The court granted a divorce to Wife on the ground of constructive desertion. The court ordered, among other things, that the parties would share legal custody of their two minor children, with Wife having tie-breaking authority; granted Wife primary physical custody of the children and Husband access under a detailed schedule; ordered Husband to pay Wife \$2,895 per month in child support, plus another sum for arrears; ordered Husband to pay Wife \$1,000 per month in rehabilitative alimony for three years; awarded Husband the marital home in Prince George’s County and Wife the home in St. Mary’s County; ordered Husband to pay Wife \$30,000 as a monetary award; and awarded Wife an interest in Husband’s retirement accounts and military pension.

Relevant Post-Divorce Filings

Within ten days of the entry of the divorce judgment, Husband moved to alter or amend the judgment. By order entered on July 1, 2021, the court denied the motion except to strike the provision of the divorce judgment awarding Wife an interest in Husband's military pension.³ Husband did not thereafter note an appeal.

In August 2021, Husband moved to modify custody and child support. By order entered on February 25, 2022, the court modified Husband's access schedule with the children and denied his motion to modify child support.

In July 2022, Wife petitioned for contempt, alleging that Husband refused to pay the monetary award and was in arrears on his alimony payments. By order entered on February 17, 2023, the court granted Wife's petition for contempt.

In October 2022, Husband moved to vacate the divorce judgment under Maryland Rule 2-535(b) on the ground of fraud, explained *infra*. By order entered March 30, 2023, the court denied Husband's motion to vacate the divorce judgment.

On April 10, 2023, Husband noted this appeal. According to his informal brief, Husband appeals from the judgment of absolute divorce, the order relating to his motion to modify custody and child support, the order granting Wife's petition for contempt, and the order denying his motion to vacate the judgment of absolute divorce.

³ This order was docketed only in one of the consolidated cases, Case No. CAD20-00554, though it reflects both case numbers.

DISCUSSION

We begin with the scope of our review. Under Maryland Rule 8-202(a), a notice of appeal must “be filed within 30 days after entry of the judgment or order from which the appeal is taken.” Husband challenges findings made by the circuit court in the memorandum opinion and judgment of absolute divorce entered years ago regarding custody, child support, alimony, the grounds for divorce, and the division of property. Because Husband did not note an appeal within 30 days after the entry of that judgment, the propriety of those findings is not before us in this appeal.

In addition, Husband’s challenge to the court’s ruling on his motion to modify custody and child support is not before us because he did not note an appeal within 30 days after the entry of the February 25, 2022 order disposing of that motion. Likewise, Husband’s due process challenge to the contempt finding is not before us because he did not note an appeal within 30 days after the entry of the February 17, 2023 contempt order.

Husband noted an appeal on April 10, 2023, within 30 days of the denial of his motion to vacate the divorce judgment. Consequently, the sole issue before us is whether the court erred by denying that motion.

Maryland Rule 2-535(b) empowers the circuit court to exercise revisory power over a judgment “at any time” on the motion of any party “in case of fraud, mistake, or irregularity.” This court reviews the denial of a motion to vacate an enrolled judgment for an abuse of discretion. *Bland v. Hammond*, 177 Md. App. 340, 346 (2007) (citation omitted). An abuse of discretion occurs “where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules

or principles.” *Das v. Das*, 133 Md. App. 1, 15 (2000) (citations and internal quotation marks omitted).

Husband asserted fraud as the basis of his motion to vacate. “[A] litigant seeking to set aside an enrolled decree must prove extrinsic fraud and not intrinsic fraud.” *Manigan v. Burson*, 160 Md. App. 114, 120 (2004) (quoting *Billingsley v. Lawson*, 43 Md. App. 713, 718-19 (1979)). “[F]raud is extrinsic when it actually prevents an adversarial trial but it is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, that truth was distorted by the complained of fraud.” *Id.* at 121 (quotation marks and citation omitted). “In determining whether . . . extrinsic fraud exists, the question is not whether the fraud operated to cause the trier of fact to reach an unjust conclusion, but whether the fraud prevented the actual dispute from being submitted to the fact finder at all.” *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990). Consequently, “an enrolled decree will not be vacated even though obtained by the use of forged documents, perjured testimony, or any other frauds which are ‘intrinsic’ to the trial of the case itself.” *Schwartz v. Merchs. Mortg. Co.*, 272 Md. 305, 308 (1974).

In his motion to vacate the divorce judgment, Husband alleged two sources of extrinsic fraud: (1) that the trial court found that Wife was coerced to sign the agreement, which contradicted an earlier finding made by a magistrate in the Circuit Court for St. Mary’s County; and (2) that Wife (and her counsel) committed perjury at the divorce trial.⁴

⁴ To the extent his informal brief raises other arguments of extrinsic fraud, they are not preserved for our review. *See Evans v. State*, 174 Md. App. 549, 557 (2007) (“Maryland appellate courts have consistently held that they will not review issues not raised or decided
(continued)

Because neither allegation, if proved, would amount to extrinsic fraud, the circuit court did not err by denying the motion to vacate. We explain.

The first allegation turns upon findings made at a December 19, 2019 hearing on Husband’s motion to dismiss Wife’s complaint for limited divorce in the Circuit Court for St. Mary’s County. During that hearing, Husband introduced the agreement into evidence and argued that the court should enforce the provision requiring Wife to dismiss her complaint for a limited divorce. Without making any findings about the agreement’s enforceability, the magistrate found no evidence on the record before it that Wife was coerced to enter into the agreement and considered it “as additional evidence” that Prince George’s County was the appropriate venue for the divorce case. Ultimately, the magistrate treated the motion to dismiss as a motion to transfer venue and recommended the entry of an order transferring Wife’s case to Prince George’s County. After the divorce case was tried, the Circuit Court for Prince George’s County found that Wife *was* coerced to sign the agreement based on the evidence presented.

Husband does not identify any fraud, much less extrinsic fraud, relative to the purported, contrasting findings made by two coequal courts on different records. He cannot allege deception or concealment by Wife of facts known to both. Even if these facts supported an allegation of fraud, which they do not, the alleged fraud “relates to facts that were before the court in the original suit and could have been raised or exposed at the trial

at the trial level.”); *see also* Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]”).

level” which is, by definition, intrinsic fraud. *Facey v. Facey*, 249 Md. App. 584, 633 (2021) (emphasis omitted).

Husband’s allegation of perjury is similarly unavailing. It is well established that perjury is intrinsic fraud. *Id.* at 634; *see also Fisher v. De Marr*, 226 Md. 509, 518 (1961) (“Perjury is held to be fraud intrinsic and within the matters and issues tried and determined and not extrinsic and collateral fraud, as it would have to be to be a basis for relief.”). For all these reasons, we affirm the order of the circuit court denying the motion to vacate.

**ORDER OF THE CIRCUIT COURT FOR
PRINCE GEORGE’S COUNTY DENYING THE
MOTION TO VACATE THE DIVORCE
JUDGMENT AFFIRMED. COSTS TO BE PAID
BY THE APPELLANT.**