Circuit Court for Prince George's County
Case No.: CAE21-10014

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 282

September Term, 2024

ULISES VARGAS, ET UX.

v.

FRANKLIN FARMS HOMEOWNERS ASSOCIATION INC.

Leahy,
Albright,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: April 22, 2025

* 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).

The Franklin Farms Homeowners Association, Inc. ("the Association" or appellee) sought an injunction against Ulises and Margarita Vargas ("the Vargases" or appellants) in the Circuit Court for Prince George's County for building a patio on their property in violation of their homeowners association's covenants. The court granted judgment for the Association. The Association subsequently filed a motion for appropriate relief asking the circuit court to authorize the presence of a sheriff during removal of the patio. The court granted the motion.

The Vargases have appealed, asking a single question:

> Did the circuit court err in considering the [Association's] motion for appropriate relief because it lacked jurisdiction to do so?[1]

We shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The Vargases live in Franklin Farms at Ammendale, a residential community near Beltsville, Prince George's County. The community is subject to a "Declaration of Covenants, Conditions and Restrictions" (the "Covenant") and is governed by the Association, a Maryland corporation. The Covenant grants to the Association the power to enforce all restrictions in the Covenant. The Covenant provides, among other things, that before erecting a structure on a lot, a homeowner shall submit a request in writing to the Board of Directors (the "Board") of the Association.

[1] The Vargases have appeared *pro se* at all relevant legal proceedings. The Maryland Supreme Court has stated that although we shall liberally construe the contents of pleadings filed by *pro se* litigants, unrepresented litigants are subject to the same rules regarding the law, particularly, reviewability and waiver, as those represented by counsel. *Simms v. State*, 409 Md. 722, 731 n.9 (2009).

The Vargases built a patio at the back of their house without submitting an Architectural Change Request ("ACR") form as required under the Covenant. The Association sued the Vargases in circuit court, and on May 9, 2023, a bench trial was held. Ruling orally from the bench, the court found that the Vargases had violated their homeowners association's covenants and granted the Association's request for an injunction. Nonetheless, the court granted the Vargases thirty days to submit a belated ACR to the Board for their patio. If the Board disapproved of the request, the Vargases had sixty days to remove the patio, and if they did not remove the patio, the Association could remove it at the Vargases' expense.

Three days after the court's ruling, the Vargases submitted an ACR form to the Board for their patio. On June 5, 2023, the Board denied the request. On June 12, 2023, the Association sent an email to the Vargases that the Board would inspect their patio on June 14 at 6:00 p.m. On that morning, the Association sent an email to the Vargases cancelling the inspection, saying the Board would reschedule. Subsequently, on July 24, 2023, the agent for the Association's management company sent a letter to the Vargases stating: "The Board and I would like to set up a time to meet with you to discuss the next steps in the issues with the architectural issues pertaining to your patio. The Board of Directors are willing to work with you and see if a resolution can be reached." The Vargases did not respond to the letter. On August 2, 2023, the Association's management company resent the letter by certified mail. The Vargases again did not respond to the letter.

On August 8, 2023, the circuit court entered a written order, essentially reiterating its earlier ruling from the bench. Specifically, the court ordered the Vargases to submit to

the Association within thirty days of its order an ACR form, and within sixty days of submission, unless the ACR form was approved, the Vargases "shall make any necessary corrections to or remove the patio[.]" If the Vargases failed to comply, the Association could remove the patio at the Vargases' expense. On August 16, 2023, the Vargases filed a timely appeal of the circuit court's written order.[2]

On September 20, 2023, while the appeal was pending, the Association's attorney sent a letter to the Vargases stating that they had until October 8 to remove the patio, noting that their ACR request had been denied, and they had refused to meet with the Board to resolve the patio issue. The letter advised the Vargases that their appeal of the circuit court's written order did not stay enforcement of the injunction. The Vargases subsequently filed a motion in circuit court to stay the circuit court's injunction pending appeal, which the circuit court denied. The Vargases did not appeal this denial.

About four months later, on February 15, 2024, the Association filed a motion for appropriate relief asking the circuit court to authorize the Prince George's County Sheriff's Department to be present during removal of the Vargases' patio. The Association alleged that their contractor was unwilling to remove the patio unless a sheriff was on standby, and the Prince George's County Sheriff's Department was unwilling to conduct a standby unless one was ordered by the court. The Vargases did not oppose the motion. The circuit court granted the motion on March 13, 2024. Two days later, the Vargases filed a motion

[2] On November 26, 2024, we issued an opinion affirming the judgment of the circuit court. *See Vargas v. Franklin Farm Homeowners Ass'n Inc.*, No. 1179, Sept. Term, 2023 (filed Nov. 26, 2024).

to alter/amend the circuit court's order, arguing: 1) the Association's motion for appropriate relief was "grossly non-conforming" as a post-judgment motion as it did not state which Maryland Rule governed the motion, and, in any event, none of the supporting exhibits were admissible without an affidavit; and 2) if the Association thought an enforcement action was necessary, it was required to file a new action for relief, not a motion post-judgment. The circuit court denied the Vargases' motion to alter or amend. The Vargases have timely appealed the court's denial.

DISCUSSION

Within the issue they present, the Vargases assert two arguments on appeal. First, they argue that the circuit court did not have jurisdiction to grant the Association's motion for appropriate relief while their appeal was pending before this court. Second, they argue that the Association's motion for appropriate relief, which was filed more than 190 days after judgment, is best characterized as a motion to revise judgment for "fraud, mistake, or irregularity" under Md. Rule 2-535(b), because only that type of motion may be filed more than thirty days post-judgment. The Vargases then argue that the motion, as characterized, was improper because it alleged "new evidence" that was not part of the original record and not in affidavit form.

Standard of Review

We review a circuit court's denial of a motion to alter or amend judgment for an abuse of discretion. *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 363 (2017). The Maryland Supreme Court has defined abuse of discretion as "discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *Miller v.*

Mathias, 428 Md. 419, 454 (2012) (quotation marks and citations omitted). Accordingly, reversal on appeal is appropriate only "in the extraordinary, exceptional, or most egregious case." *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 398 (2010) (quotation marks and citations omitted).

A. Jurisdiction

The jurisdiction question raised by the Vargases is governed by three interrelated Maryland Rules: 2-632(f); 8-422; and 8-425. We shall begin with Md. Rule 2-632(f), which governs stays of enforcement and injunctions pending appeal in circuit court. It provides, in pertinent part:

> (f) **Injunction pending appeal. –** When an appeal is taken from an order or a judgment granting . . . an injunction, the [circuit] court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the adverse party. Further procedure in the appellate court is governed by Rule 8-425.

Md. Rule 8-422 governs stays of enforcement of judgment in the appellate courts and provides:

> (a) **Civil proceedings. –**
> (1) **Generally. –** Stay of an order granting an injunction is governed by Rules 2-632 and 8-425. Except as otherwise provided in the Code or Rule 2-632, an appellant may stay the enforcement of any other civil judgment from which an appeal is taken by filing with the clerk of the lower court a supersedeas bond under Rule 8-423[.]

Md. Rule 8-425 specifically governs injunctions pending appeal and provides:

> (a) **Generally. –** During the pendency of an appeal, the Appellate Court or the Supreme Court may issue (1) an order staying, suspending, modifying, or restoring an order entered by the lower court or (2) an injunction, even if injunctive relief was sought and denied in the lower court.

> (b) **Motion in circuit court. –** Unless it is not practicable to do so, a party shall file a motion in the circuit court requesting relief pursuant to Rule 2-632 before requesting relief from the appellate court under this Rule.

We agree with the Association that the Vargases' jurisdiction argument has no merit for the simple reason that the Vargases did not seek a stay of enforcement pending appeal with our court.[3] Therefore, considering the above Rules and contrary to the Vargases' argument, the Association could seek enforcement of the injunction order (and have the Vargases' patio removed) while the judgment was pending on appeal. Accordingly, the circuit court had jurisdiction to rule on the Association's motion for appropriate relief. *See Link v. Link*, 35 Md. App. 684, 686, 688 (1977) (noting "the generally understood premise upon which we hold jurisdiction to be founded, i.e., the inherent authority of a court to enforce its decrees subject only to an express stay" and "judgments must be obeyed despite an appeal, [and] the court necessarily retains an inherent power to enforce them").

[3] Initially, the Association argues that the Vargases did not preserve the jurisdiction argument for our review because they did not raise it in their motion to alter/amend judgment. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]"). As the Vargases correctly point out, however, lack of subject matter jurisdiction may be raised at any time. *See Cnty. Council of Prince George's Cnty. v. Dutcher*, 365 Md. 399, 405 n.4 (2001). However, "[t]he right to appeal may be lost by acquiescence in, or recognition of, the validity of the decision below from which the appeal is taken or by otherwise taking a position which is inconsistent with the right of appeal." *In re M.H.*, 252 Md. App. 29, 45-46 (2021) (quotation marks and citations omitted). By not opposing the Association's motion for appropriate relief, it could be argued that the Vargases have waived their jurisdiction argument. Considering our decision on the merits, we need not address this preservation argument.

B. The Motion

The Vargases next argue that the Association's motion was a motion to revise the judgment for fraud, mistake, or irregularity, and the motion was faulty because it contained new allegations not in affidavit form. Contrary to the Vargases' argument, the Association's motion for appropriate relief was not a motion to revise the judgment for fraud, mistake, or irregularity. The motion was not styled as such, and nowhere in their motion did the Association request a revision of the judgment, let alone one based on fraud, mistake, or irregularity. Rather the Association's motion was a motion for enforcement.[4]

Regardless of how characterized, the Vargases next argue that the Association improperly presented "new" evidence in their motion because this evidence was not in affidavit form. This argument fails for two reasons.

First, the Vargases fail to direct us to any new evidence in the motion. The Vargases baldly state in their appellate brief that the Association's motion contained "supporting evidence" that was "not part of the original record[.]" *See* Md. Rule 8-504(a)(4) (stating that appellant's brief shall contain a "concise statement of the facts material to a determination of the questions presented"); Md. Rule 8-504(a)(6) (stating that appellant's brief shall contain "[a]rgument in support of the party's position"); and Md. Rule 8-504(c)

[4] As an enforcement motion, two Maryland Rules are relevant. Md. Rule 2-631, titled "**Enforcement procedures available**," states: "Judgments may be enforced only as authorized by these rules or by statute." Md. Rule 2-651, governing requests for "**Ancillary relief in aid of enforcement**" of a judgment, provides: "Upon motion and proof of service, a court in which a judgment has been entered or recorded may order such relief regarding property subject to enforcement of the judgment as may be deemed necessary and appropriate to aid enforcement of the judgment pursuant to these rules[.]" As such, the Association filed a proper motion for enforcement.

(stating that for noncompliance with this Rule, the appellate court may make any appropriate order with respect to the case, including dismissing the appeal). However, nowhere do the Vargases specify the "new evidence."[5] For this reason alone we could dismiss the Vargases' argument.

Second, the Vargases never raised their "new evidence" argument in response to the Association's motion for appropriate relief before the circuit court. In fact, they filed no response. The discretion of a circuit court is "more than broad" when reviewing a motion to alter/amend judgment, "it is virtually without limit." *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). Moreover, a circuit court "has boundless discretion not to indulge

[5] Md. Rule 2-311(c), governing motions and attached exhibits, provides in pertinent part: "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[.]" Subsection (d), governing motions and affidavits, provides: "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." Md. Rule 2-311(d).

Although the Vargases do not specifically state in their appellate brief what the new evidence consists of, the Association's motion for appropriate relief runs afoul of Md. Rule 2-311(c), (d). The Association attached to their motion the following five exhibits: Exhibit A – the ARC form sent by the Vargases to the Board after the circuit court's judgment; Exhibit B – an email from the Association to the Vargases stating that the Board will schedule a time to inspect the Vargases' patio; Exhibit C – a July 24, 2023 letter from the management company to the Vargases to set up a time to discuss their patio; Exhibit D – the same letter sent a week later; Exhibit E – a letter from the Association's attorney dated September 20, 2023, stating that because their ARC was denied, and because they refused to meet with the Board to review the patio, they must remove their patio by October 8, and their appeal does not stay enforcement of the injunction order. Within the motion, the Association alleged that the Association's contractor was unwilling to remove the patio unless a sheriff was on standby to ensure no altercations, and undersigned counsel alleged that he spoke with the Prince George's County Sheriff's Office and was told that they "will not conduct a stand[]by unless one is ordered by this Court." No affidavit was filed with the Association's motion. But as we discuss, that failure is not fatal to the Association's position.

[in the] all-too-natural desire to raise issues after the fact that could have been raised earlier but were not or to make objections after the fact that could have been earlier but were not." *Id*. While a decision on the merits "might be clearly right or wrong[,]" a "decision not to revisit the merits is broadly discretionary." *Id*. Therefore, "[a]bove and beyond arguing the intrinsic merits of an issue, [one] 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.

Given the circumstances before us and the very broad discretion of the circuit courts when ruling on motions to alter/amend, we are not persuaded to reverse the judgment of the circuit court. *Cf*. *id*. at 484 ("[W]e will not allow the appellant's reference to raising the issue in a post-trial motion to serve as a smokescreen obscuring the earlier and fatal non-preservation.").

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.