UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 352

September Term, 2014

CURTIS CELESTINE

v.

AMABELLE CELESTINE
A/K/A AMABELLE ABOUD

Eyler, Deborah S.,
Hotten
Nazarian,

JJ.

Opinion by Eyler, Deborah S., J.

Filed: June 22, 2015

Curtis Celestine, the appellant, challenges an order of the Circuit Court for Prince George's County denying his "Motion to Void Order." Amabelle Celestine, a/k/a Amabelle Aboud,[1] who is Curtis's ex-wife and the mother of the minor children, is the appellee. Curtis presents two questions for our review,[2] which we have combined and rephrased as: Did the circuit court err by denying the motion to void order? We answer this question in the negative and shall affirm the order of the circuit court.

FACTS AND PROCEEDINGS

Curtis and Amabelle were married in October 1996. Their marriage produced two children: Joshlyn, who is now 15, and Ian, who is now 11. The couple separated in January of 2006.

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[1]The appellant refers to the appellee by the name "Amabelle Estreba." The appellee uses the last name "Celestine" on some court documents and the last name "Aboud" on others. The case is captioned in this Court as "Curtis Celestine v. Amabelle Celestine, a/k/a Amabelle Aboud." For ease of discussion, we shall refer to the parties by their first names.

[2]The questions as posed by Curtis are:

> 1. Was the trial courts [sic] denial of the Appellant's Motion to Void Order legally correct given that the court that gave the order lacked statutory authority? Annotated Code of Maryland, Family Law Article, § 12-104, provides that (2) a determination of potential income made not [sic] be made for a parent who: (i) is unable to work because of a physical or mental disability.
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> 2. Did the trial court use the proper legal standards when it denied Appellant's Motion to Void order and can the court refuse to comply with the Americans with Disabilities Act, Vocational Rehabilitation and Employment Act and 2010 U.S. Code, TITLE 38 - Veterans Benefits, §3104 when simply doing so may violate state law? These are federal laws and the supremacy clause applies.

On April 3, 2006, Amabelle filed in the Circuit Court for Prince George's County a complaint for limited divorce, which she later supplemented and amended to seek an absolute divorce. Curtis filed an answer and a countercomplaint.

On March 19, 2007, a one-day merits trial was held. Both parties were represented by counsel. They called witnesses and introduced evidence. The court ruled from the bench and directed the parties to submit an order.

On April 17, 2007, the court entered a judgment of divorce. The court granted the divorce on the ground of a one-year voluntary separation. The divorce judgment incorporated a consent custody agreement, which granted Curtis and Amabelle joint legal custody of the children, with primary physical custody in Amabelle. Curtis was granted alternating weekend visitation, alternating federal holiday visits, two 2-week visitation periods each summer, Father's Day visitation, and one-half of Christmas break and spring break vacations.

With respect to child support, the circuit court found that Curtis had voluntarily impoverished himself and imputed income to him in the amount of $2,400 per month. Curtis was ordered to pay $599 per month in child support beginning April 1, 2007. His child support arrears (based upon a *pendente lite* child support order) were assessed to be $6,589 and the court entered judgment in favor of Amabelle for that amount, plus $1,000 in *pendente lite* attorneys' fees.

Meanwhile, on March 29, 2007, Curtis had filed a motion for reconsideration from the court's oral ruling.[3] He argued that Amabelle's lawyer had "misrepresented the facts" with respect to his income and "falsely stat[ed]" that he intentionally had impoverished himself; that Amabelle had perjured herself by testifying that no property was in dispute; that the divorce should have been granted on grounds of adultery and domestic abuse; that the child support ordered was "unjust" because he had been unemployed for nine months and was seeking retraining through the Department of Veteran's Affairs ("DVA"); and that he was a "disabled Veteran" and had applied for benefits from the DVA. Curtis attached to his motion documents he had received from the DVA.

On May 10, 2007, the court entered an order denying the motion for reconsideration.[4]

On May 17, 2007, Curtis noted an appeal to this Court. On February 11, 2008, this Court dismissed his appeal because he failed to file a brief. *Celestine v. Celestine*, Order, No. 718, Sept. Term 2007 (filed Feb. 11, 2008). Curtis moved for reconsideration of the order of dismissal, but his motion was denied.

In the meantime, in November of 2007, Curtis moved for modification of child support based on an increase in Amabelle's income and a decrease in his income. Following a hearing in April of 2008, Curtis's motion was denied without prejudice. (The transcript of

[3] Pursuant to Rule 2-534, Curtis's motion for reconsideration, though premature, was treated as filed on the day the divorce judgment was entered.

[4] Amabelle had opposed the motion for reconsideration and moved to strike it. She noted that Curtis had failed to respond to discovery requests and had been sanctioned by the court for this failure. She also noted that he did not introduce any evidence pertaining to his alleged disability at the merits trial.

this hearing is not in the record. Consequently, we do not know the basis upon which the court ruled.)

In August of 2008, Curtis was found in contempt for failure to pay child support. He was sentenced to 30 days' incarceration, all suspended on the condition that he make current child support payments and begin paying an additional $25 per month toward his arrears, which then totaled more than $16,000. (The record does not reflect whether Curtis began making his child support payments as ordered.)

On April 19, 2013, Curtis filed a motion to modify custody, seeking legal and physical custody of both children. He alleged that Joshlyn had been living with him for nearly two years because Amabelle had "put [her] out"; and that Ian was not safe in Amabelle's home because her new husband was physically abusive toward her and because Amabelle was verbally abusive toward Ian.

Also on April 19, 2013, Curtis filed his "Motion to Void Order."[5] In it, he asked the court to "vacate" the order of "June 6, 2007," because it was unconstitutional and unlawful, and that all "orders rendered on the basis of those Void orders be also declared void." (The docket entries do not reflect that any order was issued or entered by the court on June 6, 2007. It appears that Curtis was referring to the divorce judgment, entered on April 17, 2007, and/or the order denying his motion for reconsideration of that judgment, entered on May 10,

[5]Curtis initially attempted to file his Motion to Void Order in July of 2012. His motion for waiver of prepayment of filing fees was denied, however, because he failed to provide any proof of his income and expenses.

2007.) Curtis argued that the orders should be "voided" because the court awarded "all [marital] assets to [Amabelle] without granting a hearing," "[i]mputed income on a disabled person," "[d]iscriminated against [him] on the basis of his disability and sex," "[o]rdered child-support [in an amount] 2400% above state guidelines," and "[p]revented [him] from attending a federally funded program by not respecting all of the rights that are due." He attached to the motion a copy of a letter from the DVA dated July 21, 2011, confirming his participation in the Vocational Rehabilitation and Employment Program ("VREP"). The letter stated that Curtis was "found eligible" for the program on May 31, 2007 due to a "serious employment handicap" based upon "injury or illness directly attributed to [his] service in the Air Force" and that he did not then "possess the skills or training to enter suitable employment." Another DVA document recited that Curtis had been diagnosed with "obstructive sleep apnea," "chronic lumbar strain," and "mild keratoconus,"[6] all of which were related to his military service, making him eligible for a "service connection" for those conditions.

Amabelle answered the motion to modify custody and denied the allegations with respect to Ian. She filed an opposition to the motion to void order. She characterized the motion as "legal gibberish," argued that the divorce had been fully and finally litigated in 2006 and 2007, and maintained that the divorce judgment only was subject to being vacated

[6]Kerotoconus is a thinning of the cornea that can cause visual disturbances.

pursuant to Rule 2-535(b) for fraud, mistake, or irregularity, none of which had been shown by Curtis.

On March 26, 2014, the court held a hearing on all pending motions. On his motion to void order, Curtis argued that, because he is a disabled veteran whose rights are governed by federal law, a state court does not have jurisdiction to impute income to him or to find he is voluntarily impoverished. He maintained that federal and state law do not require him to turn over any documents pertaining to his disability benefits, his DVA benefits, or his health records. When the court asked Curtis why he had waited nearly seven years to challenge the divorce judgment, he replied that he had sued the circuit court in federal court, alleging a violation of the ADA, but that his case had been dismissed a few months earlier.

The court denied the motion on the ground that Curtis had not made any showing of fraud, mistake, or irregularity that would justify revising the divorce judgment and also on the ground that, if there was any evidence of fraud, mistake, or irregularity, Curtis failed to bring the matter to the attention of the court with due diligence.

The court took testimony on Curtis's motion to modify custody. It granted the motion in part, giving him primary physical custody of Joshlyn, with the parties to share legal custody. The court declined to modify custody of Ian. It also declined to modify child support because Curtis had failed to produce any documentation of his income.[7]

[7]The court advised that Curtis could file a new motion to modify child support at any time and supply the court (and Amabelle) with the pertinent information. If he did so, the court at that time would assess whether a modification of child support should be granted.

On April 28, 2014, Curtis filed a notice of appeal from the court's decision to deny his motion to "void order." The circuit court had not entered an order memorializing that ruling, however. The appeal was stayed and the case was remanded for the limited purpose of the court's issuing and entering an order denying Curtis's motion, which the court has since done.

DISCUSSION

Curtis contends the circuit court violated the Americans with Disabilities Act ("ADA"), federal laws governing VREP, and Maryland law by imputing income to him in determining his child support obligation at the time of the parties' divorce in 2007. He maintains that a court may not impute income to a person who is "unable to work because of a physical or mental disability," Md. Code (1984, 2006 Repl. Vol., 2012 Supp.), section 12-204(b)(2)(i) of the Family Law Article ("FL"), and that here the circuit court was without authority to decide if he was disabled and whether his diagnosis of sleep apnea qualified him as being disabled as a matter of law. On these bases, he argues that the circuit court lacked "jurisdiction" to impute income to him; that the divorce judgment is void to the extent that it ordered him to pay child support based on his potential income; and that the circuit court erred in denying his motion to void order.

These contentions lack merit. A circuit court has revisory power over its judgment for 30 days after it is entered. If a motion to revise is filed within that time period, 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." Md. Rule 2-534; *see also* Md. Rule 2-535(a) (explaining that, in an action tried to the court, the court may take any action it could have taken under Md. Rule 2-534 in response to a motion to revise filed within 30 days of the entry of the judgment).

By contrast, a circuit court's authority to revise an enrolled judgment is limited. It may "exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity." Md. Rule 2-535(b). The type of "fraud" that must be shown to meet this threshold is "extrinsic fraud," meaning fraud that occurred outside of the judicial proceeding and prevented a truly adversarial proceeding from taking place. *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013). In contrast, fraud "intrinsic" to the proceeding, such as perjury by a witness or misrepresentations of fact by an attorney for either party, may not serve as a basis for the court to revise an enrolled judgment. *See Schwartz v. Merchants Mort. Co.*, 272 Md. 305, 308 (1974) (perjury by witness at trial is "intrinsic fraud"). A "mistake" under Rule 2-535(b) is a jurisdictional defect rendering the court without jurisdiction to have entered the judgment in the first place. *Tandra S. v. Tyrone W.*, 336 Md. 303, 317 (1994). Finally, an "irregularity" under the Rule "'usually means irregularity of process or procedure . . . and not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a defendant had notice and could have challenged.'" *Id*. at 318 (quoting *Weitz v. MacKenzie*, 273 Md. 628, 631 (1975)). An example of an irregularity that would empower a court to vacate an enrolled judgment is the failure of the clerk to give notice to a party of the entry of the judgment. *Id*.

The divorce judgment in the instant case was entered on April 17, 2007, and the order denying Curtis's motion for reconsideration was entered on May 10, 2007. Curtis noted a timely appeal to this Court, but then failed to file a brief, resulting in the dismissal of his appeal. His motion to "void order" was filed on April 19, 2013, six years after the divorce judgment was entered. Curtis complains that the court failed to accept evidence of his disability at the divorce hearing, on his motion for reconsideration of the divorce judgment, and at a subsequent hearing on his motion to modify child support in April of 2008. Even if he attempted to introduce such evidence and the court erroneously refused to admit it, any such error would not amount to fraud, mistake, or irregularity that would justify vacating or revising an enrolled judgment. Curtis is incorrect that any provision of the ADA or the laws governing VREC deprive a state court of jurisdiction to determine whether a party before it is unable to work because of a disability. Moreover, any error by the circuit court in excluding evidence of Curtis's disability was subject to review on direct appeal. Curtis's failure to diligently prosecute his appeal is not a ground upon which the court may exercise its revisory power more than seven years after the enrollment of the divorce judgment.

Curtis's delay in moving to set aside the child support order in the divorce judgment was an independent basis to support the court's denial of his motion to void order. "A court . . . will only exercise its revisory powers if, in addition to a finding of fraud, mistake, or irregularity, 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." *Id*. at 314. Here, Curtis waited more than five years after his direct appeal was dismissed to file his motion to

void order on the stated basis that he was adjudicated disabled by the DVA in 2007, shortly after the entry of the divorce judgment. Curtis plainly failed to act with "ordinary diligence" to set aside the finding that he had voluntarily impoverished himself and the child support award based on that finding.

The court did not err or abuse its discretion in denying Curtis's motion to "void order."[8]

ORDER OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.

[8]On April 29, 2015, Curtis filed in this Court a "Motion For Relief From Judgment or Order" and an "Emergency Motion For Temporary Injunctive Relief." In the former motion, he repeats most of the arguments advanced in his brief, and asks that this Court "void" the 2007 orders under Federal Rule of Civil Procedure 60(b)(4). We have rejected Curtis's argument in this opinion and the rule he cites has no application to any of the proceedings in this case. That motion is denied.

As to the latter, emergency motion, Curtis asks this Court to enjoin the Prince George's County Office of Child Support Enforcement from enforcing the child support order and to direct it to "unsuspend" his driver's license and "all professional licenses." He argues that, during the time this case was on remand to the circuit court for it to enter a written order denying his motion to "void order," the motions he filed on April 19, 2014 (to "void order" and to modify custody) were "removed" from the circuit court's "file"; therefore, there is no proof other than his own date-stamped copies of the motions that they ever were filed. He argues that this Court should issue an injunction to "maintain the status quo."

The two motions that Curtis asserts are no longer in the circuit court record in fact are in the circuit court record. There is no ground to warrant the issuance of any injunction. The emergency motion is denied.