Circuit Court for Prince George's County
Case No. CAE18-40023

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 420

September Term, 2021

DAWN E. CROWELL

v.

PLANET HOME LENDING, LLC

Graeff,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 1, 2022

Dawn E. Crowell, appellant, appeals from an order issued by the Circuit Court for Prince George's County denying her motion to vacate a previously entered consent judgment pursuant to Maryland Rule 2-535(b). Her sole claim on appeal is that the court abused its discretion in denying that motion. For the reasons that follow, we shall reverse the judgment of the circuit court and remand the case for a hearing on Ms. Crowell's Rule 2-535(b) motion.

In October 2018, Planet Home Lending, appellee, filed a complaint against Ms. Crowell and M&T Bank seeking to quiet title in real property located at 14715 Turner Wooten Parkway, Upper Marlboro, Maryland (the property). In the complaint, appellee alleged that Ms. Crowell had executed a promissory note in 2007 that was secured by a Deed of Trust on the property. In 2010 Ms. Crowell entered into a forbearance agreement which extended the loan maturity date and bifurcated the loan into two portions. Portion A of the loan was for $650,000 and Portion B of the loan was for $235,029.22. The rights of Portion A of the Deed of Trust were eventually assigned to appellee and the rights to Portion B of the Deed of Trust were assigned to M&T Bank. Appellee further alleged that in 2018, M&T Bank executed a Release of the Deed of Trust that inadvertently discharged appellee's rights in the property despite the fact that appellee's lien on the property had not been satisfied. Therefore, appellee sought an order declaring that the release filed by M&T Bank was null and void; expunging the release; and reviving and reinstating its Deed of Trust, inclusive of the statutory power of sale, to its first lien position.

A review of the record indicates that no return of service or affidavit of service was filed with respect to Ms. Crowell. Nevertheless, in January 2019 counsel claiming to

represent Ms. Crowell filed an answer to the complaint which generally denied the allegations raised therein. Approximately two months later, appellee filed a motion for consent judgment. In that motion, appellee asserted that "M&T has consented to the relief sought and that . . . Ms. Crowell has confirmed that she is not opposed to this Motion." The motion was signed by an attorney for appellee, an attorney for M&T Bank, and the attorney who had filed the answer on Ms. Crowell's behalf. Notably, it was not signed by Ms. Crowell. The court subsequently granted the motion without a hearing and entered a consent judgment which awarded appellee the relief requested in its complaint.

In March 2021, appellee filed an Order to Docket seeking to foreclose on the property. Shortly thereafter, Ms. Crowell filed a motion seeking to vacate the consent judgment pursuant to Maryland Rule 2-535(b).[1] In the motion to vacate motion, Ms. Crowell alleged that the judgment had been irregularly obtained because she was never served with a copy of the quiet title action, was unaware of the quiet title action, "did not hire any attorney or consent to any attorney representing her," and did not know the attorney who had filed the answer on her behalf. Appellee filed an opposition claiming that Ms. Crowell had failed to identify a basis to vacate the judgment because the "undisputed evidence" demonstrated that she had filed an answer and agreed to the consent judgment. Ms. Crowell filed a reply wherein she again asserted that the judgment was "void" because she "was never served with process, nor did [she] hire any law firm or any attorney to represent [her] or to receive process or enter any consent judgments on [her]

[1] In that motion she also requested the court to dismiss the complaint if the consent judgment was vacated.

behalf." She also requested a hearing so that sworn testimony could be heard on that issue. In addition, Ms. Crowell filed an affidavit in support of her Rule 2-535(b) motion, averring that she had never been served with process, that she never agreed to the consent judgment, and that she had never met or retained the attorney who filed the answer and agreed to the consent judgment on her behalf. The court subsequently denied Ms. Crowell's Rule 2-535(b) motion without holding a hearing. This appeal followed.

On appeal, Ms. Crowell contends that the court abused its discretion in denying her Rule 2-535(b) motion. We agree. To vacate or modify an enrolled judgment pursuant to Rule 2-535(b), a movant must establish the existence of either fraud, mistake, or irregularity. These jurisdictional predicates are "narrowly defined and strictly applied" due to the strong countervailing interest in judicial finality. *Leadroot v. Leadroot*, 147 Md. App. 672, 682–83 (2002). We review a trial court's decision to alter or amend a default judgment under an abuse of discretion standard. *Peay v. Barnett*, 236 Md. App. 306, 315-16 (2018). However, "[t]he existence of a factual predicate of fraud, mistake, or irregularity, necessary to support vacating a judgment under Rule 2-535(b), is a question of law" which we review de novo. *Wells v. Wells*, 168 Md. App. 382, 394 (2006).

Before discussing the merits, we must first address appellee's contention that the issues raised by Ms. Crowell on appeal are not properly before us because, in her motion to vacate the consent judgment she claimed that the failure to serve her with the quiet title action constituted an "irregularity," whereas she now asserts on appeal that it constituted "fraud." However, we are not persuaded that Ms. Crowell needed to precisely identify which part of Rule 2-535(b) she was relying on to preserve her claim for appellate review.

Ultimately, it is the substance of the pleading that governs the outcome and thus this Court's "concern is with the nature of the issues legitimately raised by the pleadings, and not with the labels given to the pleadings." *Higgins v. Barnes*, 310 Md. 532, 535 n. 1 (1987). And we have previously recognized that where the facts presented "might have allowed the court to infer" allegations of fraud, mistake, or irregularity we can address all those issues even though those precise words do not appear in the Rule 2-535(b) motion. *Das v. Das*, 133 Md. App. 1, 17 n. 11 (2000); *see also Peay*, 236 Md. App. at 321 (addressing the merits of the appellant's claim that the underlying judgment was void even though that appellant did not argue that "any particular ground under Rule 2-535(b) applied").

In her motion, Ms. Crowell alleged that the judgment was void and should be vacated because she was not served with the complaint and did not know the attorney who filed the answer on her behalf. And this is the same claim that she now raises on appeal. Moreover, she unambiguously sought relief pursuant to Rule 2-535(b). Thus, regardless of whether she labeled her claim as one of fraud, mistake, or irregularity, we are persuaded that the issue of whether Ms. Crowell's motion alleged the existence of a factual predicate which could support vacating the consent judgment pursuant to Rule 2-535(b) was sufficiently "raised in" the trial court, *see* Maryland Rule 8-131(a), such that we may consider on appeal whether any of those bases for vacating the judgment apply.[2]

[2] Even if we were to find that Ms. Crowell had failed to preserve the issue, a void judgment may be attacked at any time. Thus, nothing would prevent Ms. Crowell from filing a new motion alleging the same facts and correctly identifying her claim as one of

Turning to the merits, we need not address whether Ms. Crowell's motion alleged the existence of fraud or irregularity because we are persuaded that it sufficiently raised a claim of mistake that could only be resolved with an evidentiary hearing. For the purposes of Rule 2-535(b), a mistake constitutes a "jurisdictional error, such as where the [c]ourt lacks the power to enter judgment." *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51 (2003). Maryland courts have held that improper service of process, if not waived, constitutes a "mistake" under Rule 2-535(b). *Tandra S. v. Tyrone W.*, 336 Md. 303, 317 (1994). In fact, the Court of Appeals has explained that "[t]he typical kind of mistake occurs when a judgment has been entered in the absence of valid service of process; hence, the court never obtains personal jurisdiction over a party." *Id.* at 317. Jurisdictional mistakes relating to service of process are "a proper ground to strike a judgment under Rule 2-535." *Pickett v. Noba, Inc.*, 114 Md. App. 552, 558 (1997) (citation omitted).

Ms. Crowell's motion, which was supported by affidavit, alleged that she had not been served with a copy of the summons and complaint. And her claim is not contradicted by the record as no return of service or affidavit of service was filed in the circuit court. To be sure, even if Ms. Crowell was not served, she could have waived the defense of personal jurisdiction and/or insufficient service of process, thus making Rule 2-535(b) inapplicable. *Peay*, 236 Md. App. 327-28. In fact, appellee asserts, at least by implication, that Ms. Crowell waived the service issue because she retained counsel who filed an answer

jurisdictional mistake. Consequently, even if not preserved, we would exercise our discretion to consider her claim pursuant to Maryland Rule 8-131(a) to "avoid the expense and delay of another appeal."

and agreed to the consent judgment on her behalf. But in her affidavit, Ms. Crowell averred that she did not know the attorney who filed the answer and did not authorize him to represent her. And these contradicting contentions are ultimately fact-bound issues which were never resolved by the circuit court.

In short, Ms. Crowell's allegations, if credited, could be sufficient to support a finding of jurisdictional mistake that would require the consent judgment to be vacated.[3] Ms. Crowell ultimately bears the burden of proving her claim by clear and convincing evidence. But only a credibility assessment can resolve the conflict as to the issues raised in her motion. As such, it was impossible for the court to fairly assess Ms. Crowell's allegations without holding an evidentiary hearing. *See Taylor v. State*, 388 Md. 385, 398-99 (2005) ("[W]here (1) material evidence is in conflict, (2) resolution of that conflict depends on a determination of the credibility of the witnesses through whom the conflicting evidence is presented, and (3) there are no factors apparent in the record that would enable a finder of fact reliably to judge the credibility of the witnesses, any determination made by the trier of fact is necessarily arbitrary and cannot stand."). Consequently, the court's

[3] Appellee asserts that the motion was properly denied because it did not raise a defense to the underlying complaint. However, the failure to raise a meritorious defense does not bar a request for relief from a void judgment. *Peay*, 236 Md. App. at 321 n.10.

decision to deny the Rule 2-535(b) motion without holding a hearing was an abuse of discretion under the circumstances.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED FOR AN EVIDENTIARY HEARING ON APPELLANT'S MOTION TO VACATE THE CONSENT JUDGMENT. COSTS TO BE PAID BY APPELLEE.