

Circuit Court for Charles County
Case No. C-08-FM-19-000833

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND*

No. 818

September Term, 2024

WILLIE JAMES PRUDE, JR.

v.

DIANNA LATAY PRUDE

Arthur,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: July 16, 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).

On September 27, 2019, the Circuit Court for Charles County granted an absolute divorce to appellant Willie James PruDe, Jr. (“Husband”), and appellee, Dianna Latay PruDe Jones (“Wife”).¹ The court incorporated, but did not merge, the terms of their settlement agreement into the judgment.

In March 2023, Wife filed a petition for contempt against Husband because of his alleged failure to adhere to the terms of the settlement agreement. In that petition, Wife sought to compel Husband to execute a quitclaim deed conveying the marital home to her so that she could sell it.

Following a show cause hearing on Wife’s petition, a family law magistrate afforded Husband four months to refinance the marital home and to remove Wife’s name from the mortgage. The magistrate warned that if Husband failed to do so, the marital home would be sold.

When Husband failed to refinance the marital home, a second magistrate recommended that the court appoint a trustee to sell it. Rather than hold Husband in contempt, however, the magistrate proposed that the court order the sale pursuant to the provision of Wife’s petition in which she requested “any other appropriate relief.”

On January 11, 2024, the circuit court adopted the magistrate’s recommendations, ordered that the marital home be sold, and appointed a trustee to effectuate the sale.

On April 12, 2024, Husband moved to vacate the order to sell the marital home. The court denied that motion at a hearing on June 6, 2024.

¹The appellee is now known as Diane Latay Jones.

Husband, representing himself, noted a timely appeal. He presents five issues, which we have consolidated into one: Did the circuit court abuse its discretion in denying Husband's motions to revise its order appointing a trustee to sell the marital home?

For the reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND

Marriage and Divorce

Husband and Wife were married in 2018. In June 2018, they purchased the marital home, which was titled in both of their names as tenants by the entireties.

The parties financed the purchase with a mortgage loan, secured by a purchase money deed of trust. Husband and Wife were both listed on the deed as borrowers, and they each executed the deed.

The parties separated in 2019, when Wife vacated the marital home. Husband remained in possession of the home.

On June 18, 2019, Wife filed a complaint for absolute divorce on the ground of mutual consent. The complaint was accompanied by a "Voluntary Separation and Property Settlement Agreement," executed by the parties one day earlier. Among other things, the agreement envisioned that Husband would relinquish his interest in the marital home, that Wife would prepare a deed by which Husband would convey his interest in the home to her, and that Husband would execute the deed within ten days.

On September 27, 2019, the circuit court entered a judgment of absolute divorce. The judgment incorporated, but did not merge, the Voluntary Separation and Property Settlement Agreement.

The Contempt Petition and Show Cause Hearing

On March 21, 2023, Wife filed a petition for contempt, alleging that Husband had breached the Voluntary Separation and Property Settlement Agreement—and thereby violated the divorce decree—by “fail[ing] to sign the deed within the allowed 10 days and refus[ing] to sell the property.”

On May 8, 2023, a magistrate conducted a show cause hearing on Wife’s contempt petition. At that hearing, Wife testified that she had learned that two homeowners’ association liens had been filed against the marital home. In addition to reporting that liens had been filed against the home, Wife testified that Husband was “over nine months in arrears” on the mortgage and that the home was “in foreclosure . . . due to nonpayment.” According to Wife, Husband had not made any mortgage payments on the marital home since September 6, 2022. Additionally, Wife recounted a conversation with the lender’s representative, who informed her that Husband had applied for \$30,000.00 in “COVID relief funds to bring the mortgage current[.]”

As Husband seemed to be unable to refinance the mortgage in his name alone, Wife sought an order directing that the marital home be sold. Husband opposed the sale and sought exclusive ownership of the marital home. According to him, Wife had

vacated the marital home in April 2019, and he alone had made the monthly mortgage payments since then.

Husband testified that he and Wife had executed an “Amendment of Property Settlement Agreement” and a quitclaim deed in October 2019—after the judgment of absolute divorce had been entered. Those documents, which Husband offered as exhibits, provide that he would remain in the marital home, that he would be solely responsible for all related expenses (including mortgage payments), and that Wife would relinquish any interest in the marital home. The magistrate noted the sharp difference between the amended agreement, under which Wife would “just . . . walk away without getting anything,” and the first agreement, under which Wife was entitled to “all of the proceeds” from a sale of the marital home.

The Amendment of Property Settlement Agreement and quitclaim deed were both signed by the parties and notarized. The Amendment of Property Settlement Agreement, however, had not been incorporated into any court order, nor had the quitclaim deed been recorded. Husband testified that he was unable to record the quitclaim deed because Wife had retained the original signed instrument, and the Office of Taxation did not accept his copy.²

² The quitclaim deed was recorded on January 4, 2024, and is available via the Maryland State Archives at www.mdlandrec.net. On January 5, 2025, Husband recorded another deed by which he purported to reconvey the property to himself.

When the magistrate asked whether he “want[ed] to keep the home[.]” Husband answered that he did. He claimed that he had submitted a “borrower’s response package” to the lender and applied for financial assistance through the Maryland Homeowner Assistance Fund (“HAF”). He testified that all he needed to obtain the HAF funds was a letter from the homeowners’ association and a utility bill. Reasoning that she lacked the authority to compel the lender to release Wife from the loan, the magistrate explained that the only way to obtain the release, if Husband could not refinance the loan, was to order the sale of the marital home. Husband insisted that he would “refinance and [re]move [Wife] off of the loan entirely” “[a]s soon as the borrower’s response package . . . and the [HAF] application [were] complete[.]”

The magistrate elected to continue the show cause hearing to afford Husband an opportunity to refinance. She asked Husband how long he needed. Husband answered that “it would be roughly ninety days for Maryland to finish with the bank,” and “then a few months after that I will refinance.”

Rather than grant Husband the open-ended continuance that he requested, the magistrate set a second show cause hearing for September 6, 2023, roughly five months in the future. The magistrate cautioned that she would order the sale of the marital home if Husband had not been approved for refinancing by the next hearing.

The Second Show Cause Hearing

On September 6, 2023, a second show cause hearing occurred before a different magistrate. Husband still had not refinanced the loan.

After reiterating her version of the relevant facts, Wife argued that Husband's failure to refinance the loan over the preceding four months demonstrated his inability to do so. The magistrate responded that if Husband was unable to refinance the marital home, "[W]e will have to sell it."

Turning to Husband, the magistrate inquired about any developments that had occurred since the previous hearing. Husband answered that he had prepared a signed and notarized letter of intent to assume the mortgage and sent it to Wife for her signature. According to Husband, however, Wife had never returned the document, which the lender purportedly required to "move forward with the assumption of the loan."

Wife responded that the lender would not allow Husband to assume the mortgage, because, she said, it was "sixty-six days" delinquent and \$8,439.04 in arrears. Husband did not dispute that the mortgage remained approximately \$8,000 in arrears. Instead, he maintained that he had secured funds sufficient to cure the default and claimed that those funds were in escrow with the lender. He asserted that, based on his communications with the lender, the lender would proceed with the assumption of the loan upon receipt of the letter of intent signed by Wife.

Based on Husband's spotty payment history, the magistrate predicted: "You are going to have a really hard time showing anybody that you can refinance the house. It is going to end up having to be sold." Noting that Husband had not presented any evidence of his ability to refinance the mortgage in his own name, the magistrate took a brief recess to confer with the magistrate who had conducted the earlier hearing.

When the hearing reconvened, the magistrate informed the parties that she had reviewed her colleague's orders at the close of the first show cause hearing and that she had "clearly articulated that the goal was to get the [loan] refinanced by today or it would be sold." With that goal in mind, and with the absence of alternative means of removing Wife's name from the mortgage, the magistrate recommended the appointment of a trustee to sell the marital home.

The magistrate advised Husband that he could file exceptions to her recommendations if he successfully refinanced the marital home before the ten-day exceptions period expired. *See* Md. Rule 9-208(f). The magistrate clarified the scope of her recommendation by explaining that she did not find Husband in contempt, but instead recommended the appointment of a trustee to sell the marital home pursuant to Wife's request for "any other appropriate relief." She deferred a recommendation regarding the distribution of the proceeds from the sale.

Magistrate's Recommendations and Husband's Exceptions

The magistrate memorialized her decision in written recommendations entered on September 8, 2023. She specifically recommended that a trustee be appointed to sell the marital home, that the proceeds be held in escrow, and that a hearing be scheduled to determine how to allocate the proceeds.

On September 15, 2023, Husband filed exceptions to those recommendations. He argued that the magistrate had not considered the letter of intent as evidence that the process of removing Wife from the mortgage had "already begun." He seemed to assert

that the magistrate had erroneously disregarded his testimony that “the process for a loan assumption takes more than a day,” particularly given Wife’s failure to sign the letter of intent. He attached correspondence from the lender, which he had not presented at the hearing. The correspondence indicated that the processing time for mortgage assumption applications was at least sixty days.

The circuit court held a hearing on Husband’s exceptions on December 4, 2023. We have no transcript of the hearing. Three days later, the court overruled the exceptions, concluding that the magistrate had committed no error.

In two orders entered on January 11, 2024, the court granted Wife’s contempt petition “as it relates to other appropriate relief” and appointed a trustee to sell the marital home. One of the orders contained a typographical error, stating “that a trustee shall be appointed to sell the former marital home known as **46667** Pebble Beach Court[.]” (Emphasis added.) The other order correctly listed the address, appointing a trustee “for the limited purpose of selling the real property and improvements located at **4667** Pebble Beach Court[.]” (Emphasis added.)

Husband’s Motions

Husband did not challenge the court’s orders until after the trustee executed a contract for the sale of the marital home on April 4, 2024, which set the purchase price at \$540,000.00 and scheduled settlement for May 1, 2024.

On April 12, 2024, Husband filed three motions seeking to prevent or delay the sale. First, in a “Request to Remove Trustee,” he noted the typographical error in one of

the orders and argued that the trustee had been appointed “to sell a property that is different from the [one] ordered to be sold[.]” He also argued that the trustee had incorrectly dated the certificate of service for a “Request to Set Bond and/or to Waive Bond,” filed on January 19, 2024.³ In that same motion, Husband asked the court to remove the realtor retained by the trustee, alleging that she had improperly advised Wife against signing the Letter of Intent.

In addition to the “Request to Remove Trustee,” Husband filed a “Motion to Vacate” and a “Motion to Stay” the January orders that appointed the trustee. In both motions, he asserted that the lender had “agreed to release [Wife] from the promissory note” and had sent her a release of liability on April 1, 2024. He argued that Wife was no longer liable on the promissory note and, thus, that it was unnecessary “to sell the [marital home] to remove [her] from the mortgage.” His motions were accompanied by a “Partial Release and Reaffirmation Agreement,” which provided in part: “[The lender] has agreed to release only [Wife] from the Promissory Note and Security Instrument in accordance herewith Such release is explicitly conditioned on [Wife] executing this Agreement[.]” Although Husband and the lender had executed the agreement, Wife had not.

On April 25, 2024, the trustee filed an opposition to Husband’s motions and requested that the circuit court ratify the contract of sale for the marital home. In

³ The court had granted the request to waive bond in an order entered on March 21, 2024.

opposing Husband’s motions, the trustee urged the court to deny them as moot. With respect to the contract, the trustee argued that, absent ratification, the marital home was at risk of foreclosure. The following day, Husband filed both a reply to the trustee’s response and a “Motion to Remove Petition and Strike from Record,” alleging that Wife’s contempt petition misrepresented the relevant facts.

The Motions Hearing

On June 6, 2024, the circuit court held a hearing on Husband’s four motions and the trustee’s ratification request. The court invited the parties to present any additional information bearing on Husband’s motions. In response, Husband proffered that the lender had “agreed to release [Wife] from the promissory [note] and remove her from the mortgage” and had provided Wife with a “release of liability” to that effect. Although Wife confirmed that the release had been sent to her on April 1, 2024, she emphasized that Husband had not offered any evidence of her removal from the mortgage at the September 6, 2023, hearing—as was necessary to prevent the sale of the marital home. Husband responded that the release was not available on September 6, 2023, and added that Wife did not sign the release because she was advised against doing so by “someone representing [the trustee’s] office[.]”

In denying Husband’s motions, the circuit court reasoned: “There are no valid grounds to remove the trustee or vacate the [c]ourt’s [o]rder[.]” and that “[t]he trustee . . . has not breached any fiduciary duty.” The court determined that the order was neither based on clearly erroneous fact-finding nor an abuse of discretion. It found that “the

parties w[ould] suffer if the contract and closing d[id] not go forward.” Finally, it directed Husband to vacate the marital home by June 28, 2024.

In a written order entered that same day, the court ratified the contract of sale, referred the matter to an auditor to state an account, and stated that it was “satisfied that the sale of the [marital home] was fairly and properly made,” provided that the purchaser did not default and that settlement occurred on or before June 28, 2024. Husband noted this appeal on June 25, 2024.

DISCUSSION

Appealability

On January 11, 2024, the court had entered the orders appointing the trustee to sell the marital home. Those orders were immediately appealable pursuant to Maryland Code (1974, 2020 Repl. Vol., 2023 Supp.), § 12-303(3)(v) of the Courts & Judicial Proceedings Article (“CJP”), which permits an appeal from an order “[f]or the sale, conveyance, or delivery of real . . . property . . . or the refusal to rescind or discharge such an order[.]”

Although Husband could have appealed from the orders appointing the trustee, he did not do so within the thirty-day period prescribed by Maryland Rule 8-202(a). Nor did he move to alter or amend the orders within ten days, which would have tolled the deadline for filing an appeal. *See Andrews v. O’Sullivan*, 256 Md. App. 532, 538-41 (2022). Accordingly, Husband’s appeal is untimely with respect to the orders appointing

the trustee. To the extent that the subsequent denial of his various motions amounted to a “refusal to rescind or discharge” the orders, the matter is properly before us.

Rule 2-535(b) Revisory Motions

We construe the motions underlying this appeal as motions to revise a judgment in the form of the appealable interlocutory orders appointing the trustee. Those interlocutory orders are not final judgments, as they do not put the parties out of court and deprive them of the further ability to pursue their rights. Nonetheless, the orders appointing the trustee meet the definition of a “judgment” in the Maryland Rules, because they are “order[s] of the court final in nature entered pursuant to” the rules. Md. Rule 1-202(a); *see Andrews v. O’Sullivan*, 256 Md. App. at 538-41 (holding that an appealable interlocutory order denying a stay of a foreclosure proceeding was a “judgment”).

Because Husband filed the revisory motions more than thirty days after the court entered the orders appointing the trustee, we interpret them as having been filed under Rule 2-535(b). Under that rule: “On 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.”

“The terms ‘fraud, mistake, or irregularity’ as used in Rule 2-535(b) . . . are narrowly defined and are to be strictly applied.” *Early v. Early*, 338 Md. 639, 652 (1995). In the context of Rule 2-535(b), “fraud” means “extrinsic fraud”—that is, “fraud [that] actually prevents an adversarial trial” and “prevent[s] the actual dispute from being submitted to the fact finder at all.” *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990).

“Mistake” “means jurisdictional mistake, such as where the court lacks the power to enter the judgment because it does not have jurisdiction over the person or . . . subject matter.”

Facey v. Facey, 249 Md. App. 584, 639 (2021). “[I]rregularity” means “a failure to follow required process or procedure[,]” as occurs, for example, when the court clerk fails to properly notify the parties of judgments entered in a case. *Early v. Early*, 338 Md. at 652.

To prevail on a Rule 2-535(b) revisory motion, the movant bears the burden of establishing the existence of fraud, mistake, or irregularity by clear and convincing evidence. *See Facey v. Facey*, 249 Md. App. at 601. On appeal from the denial of such a motion, “the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion.” *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 400-01 (2006) (quoting *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997)).

Analysis

In challenging the denial of his motion to strike Wife’s petition for contempt, Husband claims that the petition contained material misrepresentations upon which the circuit court subsequently relied. Assuming, solely for the sake of argument, that Wife’s contempt petition included material misrepresentations, as Husband claims, any such misrepresentations constituted intrinsic—rather than extrinsic—fraud. Therefore, the alleged misrepresentations do not give rise to a cognizable basis for post-judgment relief under Rule 2-535(b). *See Facey v. Facey*, 249 Md. App. at 605.

“In determining whether or not 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. at 232. Extrinsic fraud includes acts of deceit performed by one party that prevent the other from appearing in court. Intrinsic fraud, by contrast, encompasses “the use of forged documents [or] perjured testimony,” *Schwartz v. Merchants Mortg. Co.*, 272 Md. 305, 308 (1974), as well as “misrepresentation in a court pleading[.]” *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 50 (2003).

Husband alleges that Wife’s contempt petition contained material misrepresentations. In other words, he alleges that Wife made “misrepresentation[s] in a court pleading,” *Green v. Ford Motor Credit Co.*, 152 Md. App. at 50, which is intrinsic rather than extrinsic fraud. The alleged misrepresentations, therefore, afford no basis to revise the orders appointing the trustee.

Elsewhere, Husband appears to contend that the circuit court erroneously disregarded post-judgment evidence of the lender’s alleged willingness to release Wife from the mortgage. Specifically, he cites the release, which was sent to Wife on April 1, 2024—nearly three months after the court entered the orders appointing the trustee. This new development, however, does not amount to “fraud, mistake, or irregularity” in a preexisting judgment and is not, therefore, grounds for revising a judgment under Rule 2-535(b).

In addition to reiterating the foregoing arguments that he originally made in his post-judgment motions, Husband now advances three additional arguments that he failed to raise therein. First, he contends that Wife's contempt petition was barred by the three-year statute of limitations set forth in CJP § 5-101. Second, he claims that the court erred in appointing the trustee to sell the marital home because the magistrate presiding over the initial show cause hearing had merely required him to show that he was capable of refinancing the mortgage in his own name. Third, Husband maintains that he was improperly denied representation by the Office of the Public Defender. Because Husband did not raise these issues in the motions underlying this appeal, they are not preserved, and we decline to address them. Md. Rule 8-131(a).

Conclusion

To the extent that they are properly before us, we are not persuaded by Husband's arguments that the circuit court either committed legal error or abused its discretion in denying his post-judgment motions. Accordingly, we affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**