

Circuit Court for Wicomico County
Case No. C-22-CV-22-000068

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0823

September Term, 2023

CORELIFE, INC., ET AL.,

v.

PENINSULA HEALTH VENTURES, INC.,

Reed,
Shaw,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: March 25, 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).

This is an appeal from the denial of a Motion to Vacate filed by Appellants, CoreLife, Inc. (“CLI”) and CoreLife Management Services, Inc. (“CMS”) (collectively referred to as “CoreLife”), in the Circuit Court for Wicomico County. In March 2022, Peninsula Health Ventures, Inc. (“PHV”), Appellee, filed a complaint against Appellants asserting breach of contract claims. Appellants answered the complaint and cross-filed a counter complaint alleging six claims against PHV. After several discovery delays, sanctions ordered against Appellants, and the withdrawal of Appellants’ counsel, PHV moved for summary judgment, which was granted. Appellants then filed a Motion to Vacate the Judgment, which was denied.

Appellants timely appealed and present one question for our review:

1. Did the circuit court abuse its discretion by denying Appellants’ Motion to Vacate the summary judgments entered against them on April 26, 2023, and May 9, 2023, respectively?

For the following reasons, we affirm the judgments of the circuit court.

BACKGROUND

On February 11, 2021, CLI and PHV entered into a Membership Purchase Agreement whereby PHV agreed to sell, and CLI agreed to purchase, PHV’s fifty percent (50%) membership interest in CoreLife of Delmarva, LLC (“CLI Delmarva”) for payment of five hundred thousand dollars (\$500,000.00). As security for the purchase price, CLI executed a Promissory Note on or around February 11, 2021, in favor of PHV. Contemporaneously, CLM executed a Guaranty of all obligations of CLI under the Promissory Note. The Promissory Note split the Purchase Price into two, equal

installments of \$250,000.00. The first installment payment was due December 31, 2021, and the second installment payment was due December 31, 2022.

When PHV did not receive the scheduled payment from CoreLife on December 31, 2021, Appellee issued a Notice of Event of Default and Notice of Continued Event of Default, Acceleration and Demand for Payment.

On March 4, 2022, after receiving no payment from Appellants, Appellee filed a complaint in the Circuit Court for Wicomico County against CLI and CMS asserting two breach of contract claims, one for the promissory note and one for the guaranty. CLI's Chief Legal and Compliance Officer, Christian K. Puff, accepted service of the Complaint on behalf of CLI and CMS on March 31, 2022. Appellants filed their Answer, denying all liability and asserting three affirmative defenses, on May 4, and a Counterclaim on June 1, 2022, asserting six counts: 1) Anticipatory Breach of Contract; 2) Breach of Contract; 3) Conversion; 4) Interference with Contractual Relations; 5) Interference with Prospective Advantage; and 6) Misappropriation of Trade Secrets.

Pertinent to this case, on August 30, 2022, Appellants and Appellee filed their Joint Consent Motion to Amend Scheduling Order, setting forth the dates and deadlines for the case that both parties had agreed upon. The court entered its Order Granting Joint Consent Motion to Amend Scheduling Order on August 31, 2022.

PHV initiated discovery on November 1, 2022, issuing Requests for Admission, Requests for Production of Documents, and Interrogatories. CLI timely responded to the Requests for Admission on December 1, 2022, admitting: (1) to the authenticity of the Purchase Agreement, Note, Guaranty, Notice of Default and Notice of Acceleration; and

(2) to making zero payments under the Note. After extending CoreLife’s deadline from December 1 to December 16 for the Interrogatories and Requests for Production of Documents, PHV’s counsel repeated his requests on December 28, 2022. CoreLife failed to respond to the Requests for Production of Documents or Interrogatories, and PHV filed a Motion for Sanctions seeking to compel responses to its discovery requests on December 30, 2022. The parties participated in a settlement conference on January 9, 2023, but did not reach a resolution.

On January 17, 2023, Appellants, through counsel, filed their Opposition to the Motion for Sanctions. Six days later – on January 23, 2023 – while the discovery motion was still pending before the court, Appellants’ counsel filed a Motion to Withdraw as Counsel for Appellants (“Motion to Withdraw”). In his Motion to Withdraw, Appellants’ counsel listed the current address for both Appellants as 1099 Winterson Road, Linthicum Heights, MD 21090 (the “Winterson Address”). On January 25, 2023, the court granted counsel’s Motion to Withdraw. Two days later – on January 27, 2023, the trial court issued an Order Compelling Discovery, ordering Appellants to “fully respond to [Appellee’s] Requests for Production of Documents and Interrogatories by February 7, 2023.” No discovery responses were provided by Appellants, and no new counsel entered their appearance on behalf of Appellants. Appellants did not comply with the Discovery Order, did not file pre-trial items, or otherwise participate in the case.

Appellee timely filed a Motion for Summary Judgment, a Motion for Sanctions for Defendants’ Failure to Comply with Discovery Order, and several pre-trial items required under the Scheduling Order. These documents were served on Appellants’ principal places

of business and resident agents, but not on the Winterson Address. On April 25, 2023, the court held a scheduled pretrial conference, in which it granted PHV’s unopposed Motion for Summary Judgment. Summary Judgment was entered on April 26, 2023, and May 9, 2023, respectively. Notice of Summary Judgment was sent by the court on both dates to the Winterson Address.

Appellants filed a Motion to Vacate the judgments entered on April 26, 2023, and May 9, 2023, respectively, which asked the circuit court to vacate the summary judgments entered against Appellants, grant Appellants an additional forty-five days to respond to discovery and schedule a status hearing allowing the parties to propose a new schedule in the matter. Appellants’ motion included a request for a hearing on the Motion to Vacate. Appellee filed an Opposition to Appellants’ Motion to Vacate on June 9, 2023. Appellants’ Motion to Vacate was denied on June 12, 2023, without a hearing. Appellants timely noted this appeal on June 26, 2023.

STANDARD OF REVIEW

We review the denial of a motion to vacate an enrolled judgment under an abuse of discretion standard. *Das v. Das*, 133 Md. App. 1, 15 (2000). The “abuse of discretion standard makes generous allowances” to the trial court’s reasoning. *Id.* An abuse of discretion occurs when no reasonable person would adopt the position taken by the trial court. *North v. North*, 102 Md. App. 1, 13 (1994). An abuse of discretion also exists when the trial court acts without reference to any guiding rules or principles. *Bland v. Hammond*, 177 Md. App. 340, 346–347 (2007). The trial court’s judgment will only be reversed if

“there is a grave reason for doing so.” *Das v. Das*, 133 Md. App. 1, 16 (2000) (internal citation omitted).

DISCUSSION

I. The court did not abuse its discretion in denying the Motion to Vacate.

Appellants argue the trial court abused its discretion when it denied Appellants’ Motion to Vacate because they established all elements required to vacate a judgment under Md. Rule 2-535(b). Appellants contend that an irregularity occurred because they were not served with Appellee’s documents after their counsel withdrew. Appellants argue that because they exercised ordinary diligence and good faith regarding the judgments entered against them and that they have meritorious claims and defenses, the denial of their Motion to Vacate was not in the interest of justice. Appellants also argue that the trial court abused its discretion in denying their Motion to Vacate without articulating a basis for the denial and without granting Appellants’ request for a hearing on the Motion to Vacate.

Appellee counters that Appellants failed to establish all necessary requirements under Md. Rule 2-535(b) because all motions and orders were served upon Appellants’ principal places of business and resident agents, Appellants did not act in good faith, and Appellants do not have meritorious claims or defenses. Appellees respond that the circuit court judge had broad discretion to deny the motion to vacate and had no duty to “articulate every step in his thought process,” nor was the circuit court required to grant Appellants’ request for a hearing.

The revisory power of the trial court is authorized in parallel provisions of Maryland Code, Courts and Judicial Proceedings, § 6-408 and Md. Rule 2-535. Maryland Rule 2-535 states, in pertinent part:

- (a) **Generally.** On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.
- (b) **Fraud, Mistake, Irregularity.** 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 Maryland Code echoes these provisions:

For a period of 30 days after the entry of a judgment, or thereafter pursuant to motion filed within that period, the court has revisory power and control over the judgment. After the expiration of that period the court has revisory power and control over the judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk’s office to perform a duty required by statute or rule.

Md. Code Ann., Cts. & Jud. Proc. § 6-408.

When a motion to vacate is filed within the thirty-day period, the trial judge has broad discretion to revise an unenrolled judgment. *Dixon v. Ford Motor Co.*, 433 Md. 137, 157 (2013). When a party pursues a motion to vacate under Rule 2-535(b), “[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.” *Das v. Das*, 133

Md. App. 1, 16–17 (2000). Irregularity provides very narrow grounds for revising a final judgment. *Das*, 133 Md. App. at 23. “Irregularity” has been defined as

the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done.

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[I]rregularity, in the contemplation of 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 24 (internal citations omitted). “Specifically, this Court has held that ‘the failure of an employee of the court or of the clerk’s office to perform a duty required by statute or a Rule’ constitutes an irregularity.” *J.T. Masonry Co., Inc. v. Oxford Constr. Services, Inc.*, 74 Md. App. 598, 607 (1988), *aff’d*, 314 Md. 498 (1989).

In reviewing the trial court’s denial of Appellants’ motion to vacate, we note that the Order Granting Summary Judgment was entered on April 26, 2023. Appellants’ Motion to Vacate was filed thirty days later, on May 26, 2023, and argued under both Rule 2-535(a) and 2-535(b). On appeal, Appellants have focused their argument on the alleged irregularities under 2-535(b). The court’s order denying Appellants’ motion to vacate stated:

Upon consideration of the Defendants’ Motion to Vacate Entry of Summary Judgments and Defendants’ Request for Hearing (“the Motion”) filed by CoreLife, Inc. and CoreLife Management Services, Inc. (together, “the Defendants”), the Plaintiff’s Opposition to Defendants’ Motion to Vacate Entry of Summary Judgments (the “Opposition”) filed by Peninsula Health Ventures, Inc. (the “Plaintiff”), all pleadings filed, all proceedings before the Court, and for good cause shown, it is hereby;

ORDERED, that the Motion is DENIED in its entirety; and it is further

ORDERED, the Defendants’ request for a hearing is DENIED.

Appellants focus their argument on an alleged “irregularity.” Appellants do not argue that they were not served with the court’s notice of the order granting summary judgment. Appellants argue, instead, that they were not served with Appellee’s Motion for Summary Judgment, which was required under Rule 1-321. Appellants assert that Appellee’s motion for summary judgment should have been served upon the Winterson Address listed in the most recent pleading which was Appellants’ attorney’s Motion to Withdraw. However, it was served on Appellants’ principal places of business and resident agents.

We note that Maryland Rule 1-321 governs the service of pleadings and papers other than original pleadings: [s]ervice upon the attorney or upon a party shall be made by delivery of a copy or by mailing it to the address most recently stated in a pleading or paper filed by the attorney or party, or if not stated, to the last known address. Md. Rule 1-321. The Rule provides: [t]he clerk shall not accept for filing any pleading or other paper requiring service, other than an original pleading, unless it is accompanied by an admission or waiver of service or a signed certificate showing the date and manner of making service. A certificate of service is prima facie proof of service. Md. Rule 1-323.

Here, all pleadings filed by Appellee included a certificate of service, thus providing the clerk with prima facie proof of service. As explained in *Maxwell v. Ingerman*, 107 Md. App. 677, 679, *cert. denied*, 344 Md. 117 (1996), once the clerk of the court has received

a certificate of service, and acted upon the certificate, they have properly followed the mandate of Rule 1-323.

In *Gruss v. Gruss*, 123 Md. App. 311 (1998), this Court examined whether there was an “irregularity” within the confines of Rule 2-535(b). There, the order of dismissal should have been mailed to Ms. Gruss at the address “most recently stated in a pleading or paper.” The clerk, however, failed to mail a copy of the dismissal to that address and thus we found that an irregularity existed.

This case is distinguishable from *Gruss* because there is no indication in the record that the circuit court sent the notice of the order granting summary judgment to an incorrect address. The circuit court mailed the notice to the Winterson address, the address that was provided in Appellants’ most recent pleading. As such, there were no failures of process or procedure by the clerk of the court, and thus no irregularity in the proceedings occurred. “If the judgment under attack was entered in conformity with the practice and procedures commonly used by the court that entered it, there is no irregularity justifying the exercise of revisory powers under Rule 2-535(b).” *De Arriz v. Klingler-De Arriz*, 179 Md. App. 458, 469 (2008).

Appellants argue, nevertheless, that Appellee’s actions in mailing its motion to Appellant’s business offices and resident agents was an irregularity. Appellant, however, has provided no case law, and we have found none, that establishes that the irregularity standard includes the individual actions or inactions of parties to a case. To the contrary, the case law provides that an irregularity is directed to the actions of the court and its processes. *See Das v. Das*, 133 Md. App. 1, 23 (2000); *Gruss v. Gruss*, 123 Md. App. 311

(1998); *J.T. Masonry Co., Inc. v. Oxford Constr. Services, Inc.*, 74 Md. App. 598, 607 (1988), *aff'd*, 314 Md. 498 (1989).

To be sure, a motions judge is “accorded considerable discretion” in deciding whether to set aside the grant of summary judgment. *Scully v. Tauber*, 138 Md. App. 423, 431 (2001). The exercise of that discretion must be clear from the record. *Id.* (citing *Nelson v. State*, 315 Md. 62, 70 (1989)). Here, in light of the status of the case at the time the motions were filed, together with the lack of responsiveness by Appellants, the judge did not abuse his discretion in denying the motion to vacate the summary judgments.

Assuming arguendo, that there had been an irregularity, we find, nevertheless, that Appellants failed to demonstrate that they acted with the requisite “good faith.” “The power to set aside a judgment upon motion has been variously described as a power ‘incident to all courts of record,’ as a power based on ‘equitable grounds’ and as the exercise of a ‘quasi equitable power.’” *Tasea Inv. Corp. v. Dale*, 222 Md. 474, 478 (1960). In determining whether to strike an enrolled judgment once an irregularity has been shown to exist, a trial court must consider whether the moving party “acted in good faith, with due diligence, and had a meritorious defense.” *Alban Tractor Co. v. Williford*, 61 Md. App. 71, 79–80 (1984).

Our rules on a litigant’s duties in the midst of litigation are clear. A litigant has a duty to keep himself informed as to the progress of a pending case. *Penn Cent. Co. v. Buffalo Spring & Equip. Co.*, 260 Md. 576, 581 (1971). The duty to stay informed and file pleadings in a timely manner are the litigant’s responsibilities. *Das v. Das*, 133 Md. App. 1, 26 (2000). In the present case, Appellants repeatedly failed to respond to discovery

requests and motions prior to the withdrawal of counsel and failed to appear for a scheduling conference. Appellants ignore that they were on notice of the joint scheduling order, which was agreed upon by both parties on August 30, 2022. PHV argued their motion for summary judgment at the pre-trial hearing, which proceeded as scheduled via the joint scheduling order. Appellants failed to appear for the hearing. Because Appellants did not exhibit the good faith required under Md. Rule 2-535(b), we decline further examination of their assertion that they had meritorious claims and defenses.

Finally, in Maryland, it is well established that a judge has no duty “to articulate every step in his thought processes.” *Wasyluszko v. Wasyluszko*, 250 Md. App. 263, 282–283 (2021). We note further that a motion to vacate is not a dispositive motion under the Maryland Rules, and thus, Appellants were not entitled to a hearing before the circuit court.¹

In sum, the court did not abuse its discretion in denying Appellants’ Motion to Vacate.

**JUDGMENTS OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANTS.**

¹ Md. Rule 2-311(f) provides:

(f) Hearing--Other Motions. A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading “Request for Hearing.” The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section[.]