Circuit Court for Howard County
Case No. 13-C-15-102508

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0846

September Term, 2018

DONTÉ GREENE

v.

MARCIA GRANT

Graeff,
Nazarian,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: November 18, 2019

A father defaulted on his court-ordered child support obligations. The child's mother filed and served a petition for contempt. The father did not appear at the contempt hearing, and the court held him in contempt.

After the contempt order became a final, enrolled judgment, the father filed a revisory motion under Md. Rule 2-535(b), claiming that he had not been properly served. The court denied the motion without conducting a hearing.

The father appealed. We affirm.

FACTUAL BACKGROUND

Appellant Donté Greene is a professional basketball player. For the last several years, he has played basketball overseas.

Greene is the father of a child who lives with his mother, appellee Marcia Grant, in Howard County. In 2014 Greene agreed, among other things, to pay $4000.00 per month in child support to Grant. His agreement was embodied in a consent order.

Greene made very few of the required payments. Consequently, by early 2018, he owed more than $100,000.00 under the consent order.

On January 25, 2018, Grant sent a text message to Greene, in which she wrote: "Donte, the Consent Order dated 5/30/2014 requires you to keep the court informed of your current address. It says that if you don't do so, you may not receive notice of proceedings." Greene responded: "Ok. Wat proceedings tho[?] My address hasn't changed. It's gmoms house[.]"

In response to Greene's inquiry about the "proceedings," Grant wrote: "Unfortunately, because you haven't been paying the court-ordered child support, I'm

going to have to file for contempt. They will be sending you mail in regards to those proceeding[s]."

Greene responded: "So u trying to get me locked up?" Grant replied: "the proceedings are to get you to pay the court ordered child support." She added that their child "deserves to have both of his parents taking care of him."

On February 7, 2018, Grant filed a petition for contempt, in which she complained of Greene's failure to comply with obligations under the earlier consent order. On February 14, 2018, the court issued an order requiring Greene to show cause why he should not be held in contempt for violating the consent order. In the show cause order, the court scheduled a hearing for April 10, 2018.

On February 22, 2018, Grant's private process server delivered a writ of summons, the petition for contempt, and the show cause order to Greene's father at Greene's grandmother's house in Baltimore County – the place that, he said, was his "address." Under Md. Rule 2-121(a)(2), a party may serve an individual "by leaving a copy of the summons, complaint, and all other papers filed with it at the individual's dwelling house or usual place of abode with a resident of suitable age and discretion."

Greene did not file a written response to the petition for contempt. Nor did he appear at the show cause hearing. Consequently, on the date of the hearing, April 10, 2018, the court held him in contempt; found that his child support arrearages exceeded $152,000.00; and ordered that he could purge himself of his contempt by paying $25,000.00 to Grant by May 9, 2018, and paying an additional $25,000.00 per month until the arrearage was paid in full. The court scheduled another hearing for May 9,

2018, at which Greene could offer proof that he had made the first payment or that payment was impossible.

Greene failed to appear at the hearing on May 9, 2018. Consequently, the court issued an order for body attachment.

On May 11, 2018, Grant filed a proposed order, by which the court would direct the Maryland Child Support Enforcement Administration to inform the United States Department of Health and Human Services of Greene's child support arrearages and advise Greene (among other things) that the United States Department of State might deny, revoke, or rescind his passport. The court signed the proposed order on May 15, 2018, and it was entered on the docket two days later.

On May 17, 2018, the day on which the clerk docketed the order directing the Child Support Enforcement Administration to advise Greene that the State Department might revoke his passport, Greene filed a motion to revise and vacate the order of contempt and all subsequent orders. In his motion, which was premised on the court's power to revise an enrolled judgment under Md. Rule 2-535(b) because of fraud, mistake, or irregularity, Greene argued that he did not reside at the address that he had said was his address. In support of that argument, Greene submitted affidavits in which he, his father, and his grandfather averred that he used that address as his mailing address, but that he did not live there. Greene requested a hearing on his motion.

The court denied the motion, without a hearing, on June 13, 2018. Greene took a timely appeal. He poses one question: "Did the trial court err by denying [Greene's] motion challenging service without a hearing?"

For the reasons stated below, we perceive no error or abuse of discretion. Hence, we shall affirm the judgment.

DISCUSSION

Under Md. Rule 2-535(a), a circuit court has "'unrestricted discretion'" to revise a judgment within 30 days after the entry of judgment. *See, e.g., Platt v. Platt*, 302 Md. 9, 13 (1984) (quoting *Maryland Lumber Co. v. Savoy Constr. Co.*, 286 Md. 98, 102 (1979)). After 30 days, however, the judgment is said to become "enrolled." Thereafter, a circuit court can revise the judgment only upon a showing, by clear and convincing evidence,[1] of "fraud, mistake, or irregularity," as those terms are "'narrowly defined and strictly applied'" in the case law. *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (quoting *Thacker v. Hale*, 146 Md. App. 203, 217 (2002)); *accord Early v. Early*, 338 Md. 639, 652 (1995).

Rule 2-535(b) reflects a strong policy in favor of putting an end to litigation (*see, e.g., Penn Cent. Co. v. Buffalo Spring & Equip. Co.*, 260 Md. 576, 585 (1971); *Bland v. Hammond*, 177 Md. App. 340, 357 (2007)) and of fostering the certainty and reliability of enrolled judgments. *See Powell v. Breslin*, 430 Md. 52, 71 (2013) ("[t]he overarching aim of Md. Rule 2-535(b) . . . is the preservation of the finality of judgments, unless specific conditions are met[]"). "[O]nce parties have had the opportunity to present before a court a matter for investigation and determination, and once the decision has been rendered and the litigants, if they so choose, have exhausted every means of

[1] *See, e.g., Powell v. Breslin*, 430 Md. 52, 70 (2013); *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013); *Davis v. Attorney General*, 187 Md. App. 110, 123-24 (2009).

reviewing it, the public policy of this State demands that there be an end to that litigation." *Schwartz v. Merchants Mortg. Co.*, 272 Md. 305, 308 (1974); *accord Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366 (2013); *Tandra S. v. Tyrone W.*, 336 Md. 303, 314 (1994). The policy is so strong that the Court of Appeals has rejected a challenge to an enrolled judgment that was shown, through scientific proof, to be wrong. *Tandra S. v. Tyrone W.*, 336 Md. at 320.[2]

We assume for the sake of argument that Greene has alleged a basis for a finding of jurisdictional "mistake" within the meaning of Rule 2-535(b) by offering evidence that he did not reside at his grandmother's house and that he used it only as his mailing address. These allegations of deficient service could support a finding of "mistake." *See, e.g., Tandra S. v. Tyrone W.*, 336 Md. at 317 ("[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[]").

Greene argues that the court erred by denying his motion without conducting an evidentiary hearing to determine whether he did or did not reside at his grandmother's house – i.e., whether the house was his "dwelling house or usual place of abode," within the meaning of Rule 2-121(a)(2). He cites *Wilson v. Maryland Dep't of the Environment*, 217 Md. App. 271 (2014), in which this Court held that an administrative law judge erred

[2] In *Tandra S. v. Tyrone W.*, 336 Md. at 319-20, the Court held that Rule 2-535(b) did not authorize a trial court to vacate an enrolled judgment of paternity based on a post-judgment blood test that conclusively excluded the movant as the potential father. The General Assembly later enacted a statute permitting the revision of a paternity judgment on grounds other than the narrow grounds enumerated in Rule 2-535(b). *See Langston v. Riffe*, 359 Md. 396, 403-06 (2000).

in failing to conduct a hearing to resolve a factual dispute about whether a party had been served.

Wilson is completely inapposite, because it involves a motion to vacate an order of default (*see id*. at 278), which is not a judgment, let alone an enrolled judgment, but a mere interlocutory order that must be vacated if the defendant's timely motion shows the basis for an actual controversy and an equitable justification for the failure to plead. *See* Md. Rule 2-613(e). Wilson says nothing about what a court must do when it evaluates a Rule 2-535(b) motion to revise an enrolled judgment on grounds of fraud, mistake, or irregularity.

If Greene had the right to a hearing, the right derived from Rule 2-311(f), which states that "the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested." In this case, the court was not required to give Greene a hearing, because the denial of his motion to revise an enrolled judgment was not "dispositive of a claim or defense."

"[A] 'dispositive' decision is one that conclusively settles a matter." *Lowman v. Consolidated Rail Corp*., 68 Md. App. 64, 76 (1986); *accord Pelletier v. Burson*, 213 Md. App. at 292. The dispositive decision in this case was the grant of the petition for contempt, not the denial of the Rule 2-535(b) motion to reopen the matter. *Pelletier v. Burson*, 213 Md. App. at 293. By denying Greene's post-judgment, revisory motion under Rule 2-535(b), the court merely refused to change the original ruling that disposed of Greene's defenses. *See Lowman v. Consolidated Rail Corp*., 68 Md. App. at 75;

accord Pelletier v. Burson, 213 Md. App. at 293. The court, therefore, did not err in declining to conduct a hearing on Greene's Rule 2-535(b) motion.[3]

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[3] Greene does not expressly challenge the merits of the court's ruling on his motion to revise the enrolled judgment. If he did, however, we would find no error or abuse of discretion. *See In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997) (stating that, in an appeal from the denial of a motion to revise under Rule 2-535(b), "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[]"). On this record, the court could reasonably conclude that Greene failed to show, by clear and convincing evidence, that it was improper for Grant to serve him by delivering the summons, etc. to his father (a person of suitable age and discretion) at the address that Greene himself had said was his address for purposes of receiving notice of court proceedings. Furthermore, because Greene almost certainly had actual notice of the contempt proceedings (from Grant before the proceedings even began, from his father after his father was served, and from Grant after the order for contempt was granted), the court could reasonably conclude that Greene failed to act with good faith or reasonable diligence, another requirement for relief under Rule 2-535(b), by waiting until the judgment had become enrolled to challenge the sufficiency of service of process. *See, e.g.*, *Thacker v. Hale*, 146 Md. App. at 217 (quoting *Platt v. Platt*, 302 Md. 9, 13 (1984)) ("the party moving to set aside the enrolled judgment must establish that he or she 'act[ed] with ordinary diligence and in good faith upon a meritorious cause of action or defense[]'").

The correction notice for this opinion can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0846s18cn.pdf