Circuit Court for Anne Arundel County
Case No. C-02-FM-20-003434

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 847

September Term, 2023

SANJEEV JATAIN

v.

POONAM MALIK

Reed,
Beachley,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 3, 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).

Appellant Sanjeev Jatain and appellee Poonam Malik obtained a Judgment of Absolute Divorce on April 7, 2021, in the Circuit Court for Anne Arundel County. On January 6, 2023, Ms. Malik filed a motion to revise that judgment pursuant to Rule 2-535(b).[1] After an evidentiary hearing, the court granted Ms. Malik's motion, concluding that the divorce judgment was procured by extrinsic fraud. Mr. Jatain appeals from that decision and presents the following question for our review, which we have slightly rephrased:

> Did the circuit court err in vacating the judgment of divorce on the basis that it was procured by extrinsic fraud?

We hold that the circuit court erred in vacating the judgment based on extrinsic fraud, and therefore reverse.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Jatain and Ms. Malik were married on February 6, 2003, in India, and had two children as a product of their marriage. The parties subsequently moved to Maryland. In late 2019, the parties decided to end their marriage. Throughout 2020, the couple had numerous discussions concerning custody, child support, and the disposition of their assets. Ms. Malik alleges that these conversations culminated in a written agreement regarding property disposition and other marital issues, which she signed in December 2020 when Mr. Jatain provided her with forms for an uncontested divorce. Mr. Jatain unequivocally

[1] Rule 2-535(b) provides: "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."

denies that he and his wife ever executed a written agreement resolving their marital issues.

There is no dispute that both parties wanted to obtain a divorce. Mr. Jatain initiated the divorce by filing a complaint for absolute divorce on December 9, 2020. In the complaint, Mr. Jatain alleged that there was a "mutual agreement not to seek any alimony." Mr. Jatain checked the following box in the court-approved form complaint: "My spouse and I have no marital property or debts that need to be decided by the court." Mr. Jatain filed an affidavit of service that Ms. Malik was served with the complaint on December 18, 2020.

Although Ms. Malik claims that she was never served with the complaint, she acknowledges that she signed a court-approved form answer, which Mr. Jatain filed on February 22, 2021. The answer admits all allegations in the complaint and presents no defenses, although Ms. Malik avers that she only saw the signature page of the answer. Mr. Jatain signed the certificate of service for the answer (meaning that he essentially certified service to himself).

Mr. Jatain filed a case information report for each of the parties. Both case information reports were filled out by Mr. Jatain and list the case as being uncontested. Ms. Malik's case information report was signed by her in December 2020. Mr. Jatain and Ms. Malik were both self-represented throughout the uncontested divorce proceeding.

Both parties attended a virtual hearing before a magistrate on April 6, 2021. When the magistrate asked, "Have the parties resolved all of their outstanding issues?" and "the two of you have distributed all of your property, is that correct?," both parties answered

affirmatively. The magistrate also advised both parties that "you did not make a request for alimony, monetary award or retirement benefit and because of that, that is a waiver that you cannot come back to the [c]ourt at a later date and ask the [c]ourt to grant your relief, you understand that?" Both Mr. Jatain and Ms. Malik indicated that they understood the waiver as explained by the magistrate. Although the magistrate understood that the parties "wanted to take care of the children pursuant to [their] agreement," the magistrate advised them that the law required a determination of child support pursuant to the Child Support Guidelines. Accordingly, the magistrate took testimony concerning the parties' incomes and children's health insurance expenses, and ordered Mr. Jatain to pay $2,112 per month in child support directly to Ms. Malik. Despite the reference in Mr. Jatain's complaint about the parties' "mutual agreement," neither party mentioned nor referred to any written agreement during the hearing.

The circuit court entered a Judgment of Absolute Divorce on April 7, 2021. The court granted Ms. Malik sole legal custody and primary physical custody of the children, with liberal visitation to Mr. Jatain. The judgment approved the magistrate's recommendation that Mr. Jatain pay $2,112 per month in child support. The order further provided that "both parties have waived their right to request alimony, monetary award and retirement benefits from the other party, and all other marital property issues resulting from the marriage have been resolved by agreement of the parties."

In September 2022, Ms. Malik retained counsel and requested copies of the filings from the circuit court. She alleges that this was the first time she saw the complaint and

the complete answer. Upon discovering that the written agreement had not been filed with the court as she thought, Ms. Malik sent an email to Mr. Jatain requesting a copy of the agreement. Mr. Jatain replied that there was no written agreement. On January 6, 2023, Ms. Malik filed a Motion for Court to Exercise Revisory Power, to Reopen Case, and for Other, Further Relief. She alleged that the Judgment of Absolute Divorce was obtained through extrinsic fraud. Mr. Jatain then moved to dismiss Ms. Malik's motion to revise.

The circuit court held a hearing on the motions on May 26, 2023. The court first denied Mr. Jatain's motion to dismiss, noting that the allegations in Ms. Malik's motion to revise, if proven, could support a finding of extrinsic fraud. The court then allowed the parties to present evidence on Ms. Malik's motion to revise.

MS. MALIK'S TESTIMONY

Ms. Malik testified that she was never served with the complaint, and first saw the complaint and answer in September 2022, after requesting copies from the court. She testified that, sometime in late December 2020, Mr. Jatain provided her a set of documents that he said constituted "the mutual paperwork that we're filing for mutual divorce." Among these papers were Ms. Malik's case information report and the signature page of the answer, which were "prefilled" by Mr. Jatain. Ms. Malik recounted that the written agreement regarding marital property was also among the divorce paperwork, and that she signed the agreement in Mr. Jatain's presence. She believed she was signing the "overall paperwork for mutual divorce," and Mr. Jatain told Ms. Malik that all the paperwork she signed that day, including the written agreement, would be filed with the court. Mr. Jatain

told Ms. Malik not to date the papers she was signing, because he would "put the date that [he was] filing them in the court as a mutual application." She did not know why Mr. Jatain signed her answer's certificate of service. Ms. Malik testified to her understanding that the written agreement would be filed in court with the other documents, explaining: "Of course, it has to be filed in court, because that's why we are working on the agreement, otherwise what do I have." She further explained, concerning the divorce proceedings, that "everything was led by him right from the start to finish. He was leading the whole process, all the paperwork." Ms. Malik did not receive a copy of the written agreement and did not see it again after she signed it.[2] She acknowledged her "mistake" in not having an attorney and trusting her husband in the handling of the divorce.

To explain why she did not inquire further into what documents she was signing, Ms. Malik testified that, during the negotiations and divorce proceedings, she trusted Mr. Jatain: "I signed whatever [Mr. Jatain] asked me, because I never wanted to go to court, I just want to take care of [the] kids and be done with this thing." Ms. Malik had known Mr. Jatain "all [her] life from [her] teen years till [her] divorce" at age 43. She trusted that he would file the written agreement with the court, as he said he would.

Both Mr. Jatain and Ms. Malik attended and participated in the divorce hearing before the magistrate. According to Ms. Malik, she had not seen the complaint or answer and believed that the written agreement had been filed with the court. Thus, when she

[2] Ms. Malik introduced into evidence a document that she prepared to reflect her recollection of the basic terms of the written agreement.

answered "yes" to the magistrate's question concerning whether the property issues were resolved, she meant "resolved, yes, based on the agreement we have." Similarly, when she answered "yes" to the magistrate's question about whether all the property had been distributed, she thought that meant "we have settled on our financials[,]" through the written agreement. She acknowledged that she "didn't ask any questions regarding [the] agreement" at the magistrate's hearing, and recognized that the agreement could have been addressed by the magistrate had the issue been presented. According to Ms. Malik, the text of the agreement consisted of a "single page," with a second page that listed "financial, assets and liabilities." She stated that the agreement did not address retirement and included an alimony waiver.

Regarding acknowledgment or enforcement of the agreement, Ms. Malik testified that Mr. Jatain followed the terms of the agreement for a year after the divorce. However, when he stopped abiding by those terms, she asked him for a copy of the written agreement. In response, Mr. Jatain denied the existence of a written agreement.

MR. JATAIN'S TESTIMONY

Mr. Jatain consistently maintained that the parties never executed a written agreement. According to him, Ms. Malik was served with the complaint in "mid to late December" 2020, and he was present when she was served. Mr. Jatain denied that he gave Ms. Malik only the signature page of the answer or that she signed the answer in December 2020. Instead, Mr. Jatain testified that in a phone call with Ms. Malik during her trip to India with the children, he discussed her answer, going over the form document "point by

point." He filled out the court-approved answer in accordance with their phone conversation, and took it to her to sign in February 2021 after she returned from India. When Ms. Malik signed the answer, Mr. Jatain told her what the document was and asked her to "please go through it." He explained that he signed the answer's certificate of service because he actually filed the document in the circuit court.

Mr. Jatain testified that he told the magistrate at the divorce hearing that there was no property to be divided because "we are discussing between us and we don't need [the] [c]ourt to help or mediate," and that he and Ms. Malik have "work[ed] together for [a] long time and we have that kind of confidence level." When Mr. Jatain checked the box on his form complaint that the parties had agreed upon all property issues, he meant that "we are talking" about an agreement.

Mr. Jatain testified that Ms. Malik "gets . . . 50 percent" of the liquor store, but also asserted that "[t]here's no agreement on the liquor store." He testified that "there's no agreement on retirement" and "there's no agreement" on custody or child support. He explained that the money he had given Ms. Malik since their separation was based on what he believed to be her "fair share," rather than an agreement between them. When asked why he would pay her money when there was no order or agreement that he do so, Mr. Jatain testified: "Because as a human being, if I was with someone, as a responsibility I will pay 50 percent which is her share." Mr. Jatain admitted that, in an email to Ms. Malik, he told her he would prepare an agreement concerning their property, but he stated that they did not enter into a written agreement because "she's not agreeing to anything." Mr.

Jatain denied that the parties were still discussing the terms of an agreement, stating: "Whatever [we] discussed long back is done, there's nothing more to discuss." Irrespective of the lack of a written agreement, Mr. Jatain confirmed that he and his wife had reached an agreement "over the past two years" that the value of their property was "roughly" 2.1 million dollars. He indicated that he had already paid Ms. Malik "around 1 million" dollars, exclusive of child support, some of which he paid prior to the divorce.

THE PARTIES' EMAILS

Emails entered into evidence at the hearing indicate that, both before and after their divorce, the parties discussed specific aspects of their property distribution. Specifically, the emails in 2020 discussed how much of the children's expenses each party would pay, with an apparent understanding that Mr. Jatain would pay half of the expenses if Ms. Malik is working, and 100% of the children's expenses if she is not employed. The parties also discussed how to distribute various assets, including the liquor store, jewelry, cars, and the marital home. On June 26, 2020, Mr. Jatain told Ms. Malik that he would "prepare a financial agreement on what we talked [about]." An email from Mr. Jatain on July 28, 2020, titled "Financial Draft for Divorce," included a spreadsheet listing the parties' various assets and debts.

After the divorce, the parties' emails indicate that they continued discussing payments for the children's expenses and specific aspects of the distribution of their property. In November 2021, Mr. Jatain indicated that he would pay one-half of both the down payment and monthly payments for Ms. Malik to purchase a new vehicle. He also

asked Ms. Malik to withdraw $30,000 from a joint bank account that he intended to close. Most of the post-divorce emails were written between January and February 2022. These emails focus primarily on splitting the profits from the liquor store, a plan to sell the liquor store and how to distribute the sales proceeds, and Ms. Malik's plan to purchase a house in Massachusetts. Concerning the liquor store, the emails appear to reflect an understanding that Ms. Malik would receive half the profits from the business and half of the proceeds from its sale. The discussions concern only when the business would be sold and various options for Ms. Malik to receive money from the business. As to the house in Massachusetts, their emails reveal an understanding between the parties that Mr. Jatain would pay half the down payment on Ms. Malik's house, and would pay half the monthly mortgage payments until the youngest child reaches age 18. The only unresolved questions related to the amount of the mortgage and what information Mr. Jatain wanted regarding the house. Ms. Malik testified that Mr. Jatain provided a $200,000 down payment on her Boston home. There was also some discussion regarding how Mr. Jatain would transfer jewelry in his possession to Ms. Malik, and when Mr. Jatain would establish a trust for the children. On July 21, 2022, Mr. Jatain told Ms. Malik in an email concerning the remaining financial issues, "I've no obligation to pay you anything other than your share," which he indicated was 50% of the remaining assets.

CIRCUIT COURT'S BENCH OPINION

After receiving evidence and arguments from counsel, the court rendered its opinion from the bench. The court concluded that the evidence of extrinsic fraud was "clearcut."

After providing a brief explanation of extrinsic fraud, the court presented its findings and conclusions:

> In this case, it is clear to the [c]ourt that the plaintiff's actions actually deprived the defendant of an adversarial trial.
>
> I base this decision on a number of reasons. First, I find that the defendant is credible and I believe her when she tells me that she was not properly served and did not sign the documents as presented. . . .
>
> And that she did not knowingly sign any documents that were presented to her. I find it incredibly interesting and I find it to be detrimental to the plaintiff that every[thing] was prepared by him, every document was filed by him. Case information report, answer, divorce pleading, all of that and none of those documents had anything which referenced a mutual agreement that may have been made which the defendant claims was made.
>
> I think it's very interesting when you review the documents and you compare the testimony in court to what I heard just now that the plaintiff told me repeatedly, there was no agreement, there was no agreement, there was no agreement.
>
> Well that is absolutely not true when we look at the document that he filed which was a complaint for absolute divorce where he said there was a mutual agreement to support the children, where he said there was a mutual agreement not to have alimony.
>
> If you look at the case information reports, they both say that this is an uncontested issue and the case is not contested. The [c]ourt is not convinced that the plaintiff's testimony is accurate.
>
> The [c]ourt does believe that there were agreements in this case and there is proof of the agreements both pre and post divorce. The [c]ourt finds it hard to believe that absent an agreement which was not attached to the divorce, which was not presented to the [c]ourt, and that she was not aware of, that somehow voluntarily he's going to be giving her half the profits of a liquor store which he allegedly solely owns, that he's going to [give] her $200,000 in March of '22 to buy a home in Massachusetts, is going to give her $75,000 pre divorce and another 110,000 pre divorce to buy a house. I just don't find any of that to be credible, that there's no agreement, but I'm still going to give $200,000 post divorce?

> If there's no agreement, why did he give her the money? So the [c]ourt does believe when the defendant tells me that there was an agreement and she was -- and that the paperwork was fraudulent when presented to the [c]ourt.
>
> I just don't understand why he served an answer on himself. I mean, he literally prepared every document and presented every document to the court, and those documents were not accurate.
>
> The e-mails talk about down payments and car payments and mortgages and the liquor store, bank accounts, the timeshare. He testified or he -- in his complaint, he said all property has been distributed. Well, we know it was not true that all property has been distributed because he gave her $200,000 post divorce.
>
> The [c]ourt does believe that this was a case where they -- he said, we'll just deal [with] it ourself and not involve the courts. And the [c]ourt does believe her when she said, that there was a promise made that it would be a mutual divorce and that the agreement would be filed.
>
> And the [c]ourt does believe and the [c]ourt does find credible that the paperwork which was filed was materially deficient in terms of what may have been an agreement between the parties. And, in fact, prevented an adversarial trial in this case.

Based on its finding of extrinsic fraud, the court entered an order vacating the judgment of absolute divorce on May 31, 2023. Mr. Jatain noted this timely appeal.

DISCUSSION

The circuit court at least implicitly accepted Ms. Malik's testimony that she signed a written settlement agreement in December 2020. Based on that finding, the court concluded that Mr. Jatain engaged in extrinsic fraud when he failed to file the settlement agreement with the complaint for divorce and other papers necessary to obtain an uncontested divorce. Mr. Jatain maintains that the court erred in finding that the parties executed a written settlement agreement, but alternatively asserts that the terms of any such

agreement "are not definitive nor final." Naturally, Ms. Malik argues that the court did not clearly err in finding that the parties signed a settlement agreement and that Mr. Jatain committed extrinsic fraud by omitting the agreement from the court filings necessary to secure the divorce. Ms. Malik further asserts that certain procedural deficiencies related to securing the uncontested divorce amounted to extrinsic fraud.

A. The Court Did Not Err In Finding That The Parties Executed A Settlement Agreement

We have no difficulty concluding that the court's finding that the parties executed a written settlement agreement is not clearly erroneous. Ms. Malik consistently testified that she signed a written settlement agreement that was specific as to the resolution of marital property. She testified that she signed the agreement in Mr. Jatain's presence when he "came with all the prefilled forms." Although she has not seen the written agreement since she signed it in December 2020, she introduced an exhibit that reflected her recollection of the "primary major issues" that were agreed upon. In light of the court's credibility finding in favor of Ms. Malik, her testimony alone is sufficient to support the court's determination that the parties executed a written settlement agreement resolving marital property and other issues related to the divorce.[3]

[3] We note that Mr. Jatain also advised the magistrate that the parties had distributed their property, thus implying the existence of some form of oral or written agreement.

B. THE COURT ERRED IN DETERMINING THAT MR. JATAIN'S FAILURE TO FILE THE SETTLEMENT AGREEMENT OR OTHERWISE ALERT THE COURT OF ITS EXISTENCE CONSTITUTED EXTRINSIC FRAUD

Although we take no issue with the court's finding that the parties executed a written settlement agreement, Mr. Jatain's failure to file the settlement agreement with the court or otherwise bring the agreement to the court's attention prior to entry of the divorce judgment does not constitute extrinsic fraud as defined by Maryland caselaw. We explain.

Although we review fact findings for clear error, whether the underlying facts create "'a factual predicate of fraud . . . necessary to support vacating a judgment under Rule 2-535(b)' . . . is a question of law" reviewed without deference. *Facey v. Facey*, 249 Md. App. 584, 601 (quoting *Wells v. Wells*, 168 Md. App. 382, 394 (2006)). "The burden of proof in establishing fraud . . . is clear and convincing evidence." *Id.* (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008)). Where fraud exists, we review the court's decision to grant or deny a motion to revise a judgment for abuse of discretion. *Id.*

Maryland courts continue to follow the reasoning in *United States v. Throckmorton*, 98 U.S. 61 (1878), that there are two types of fraud relevant to this inquiry—extrinsic fraud and intrinsic fraud—and that a judgment may be vacated only upon a showing of extrinsic fraud.[4] *See Facey*, 249 Md. App. at 632. After extensively reviewing applicable caselaw,

[4] Several other states no longer distinguish between extrinsic and intrinsic fraud and instead allow courts to revise or vacate judgments based on either type of fraud. *See, e.g.*, *NC-DSH, Inc. v. Garner*, 218 P.3d 853 (Nev. 2009); *West v. West*, 288 S.W.3d 680 (Ark. Ct. App. 2008); *Patel v. OMH Med. Center, Inc.*, 987 P.2d 1185 (Okla. 1999); *Pepper v. Zions First Nat. Bank, N.A.*, 801 P.2d 144 (Utah 1990).

the *Facey* Court made the following observations:

> Extrinsic fraud *perpetrates an abuse of judicial process by preventing an adversarial trial and/or impacting the jurisdiction of the court*. Fraud prevents an adversarial trial when it keeps a party ignorant of the action and prevents them from presenting their case, [or] the fraud prevents the actual dispute from being submitted to the fact finder at all.

Id. (citations omitted). "The party seeking relief must show that the fraud . . . is 'unmixed with any fault or negligence in himself.'" *Id.* at 634 (quoting *Md. Steel Co. of Sparrows Point v. Marney*, 91 Md. 360, 370 (1900)). "[I]f the fraud could have been discovered at trial, it is unlikely to be considered extrinsic." *Id.* at 632. Such fraud is more likely to be considered intrinsic if it "relates to facts that were before the court in the original suit and could have been raised or exposed at the trial level." *Id.* at 633 (emphasis removed). "If a party could have discovered the fraud, but 'by reason of its own neglect' it failed to exercise the 'care in the preparation of the case as was required of it,' the fraud will be intrinsic." *Id.* (quoting *Marney*, 91 Md. at 371). "Fraudulent or forged documents that were contained within or could have been addressed at trial . . . are normally considered intrinsic to the original suit." *Id.* at 634.

A leading case on the distinction between extrinsic and intrinsic fraud is *Hresko v. Hresko*, 83 Md. App. 228 (1990). The Court there considered whether the "fraudulent concealment of assets by one spouse during negotiations leading to a separation and property settlement agreement subsequently incorporated into a divorce decree is intrinsic or extrinsic to the divorce litigation." *Id.* at 229. In the settlement agreement, Husband agreed to pay $400 per month in child support, the entire cost of the child's college

education, and certain family debts. *Id.* at 230. The agreement also provided Wife the option to purchase Husband's share of the marital home within three years of the date of the settlement agreement. *Id.* Less than a year after the judgment of divorce, which incorporated the settlement agreement, Wife exercised her option to buy Husband's share of the marital home, paying him $30,000 in cash. *Id.* Husband filed a motion to revise the judgment, alleging that Wife concealed assets during their settlement negotiations. *Id.* Husband alleged that "during negotiations between the parties prior to the agreement, [Wife] represented and constantly reiterated to him that she had no money in any account or investment except for a small reserve account used for her expenses during the summer when she was not working." *Id.* at 231. Wife filed a motion to dismiss Husband's revisory motion, which the court granted. *Id.* at 230–31. Husband appealed, and we affirmed, holding that the "alleged concealment of funds is an example of, at most, intrinsic fraud." *Id.* at 232.

We described extrinsic fraud as fraud which "prevented the actual dispute from being submitted to the fact finder at all," and in which "there has never been a real contest in the trial or hearing of the case[.]" *Id.* at 232–33 (first citing *Fleisher v. Fleisher Co.*, 60 Md. App. 565, 571 (1984), then quoting *Schwartz v. Merchants Mortg. Co.*, 272 Md. 305, 309 (1974)). We contrasted this with intrinsic fraud, defined as "[t]hat which pertains to issues involved in the original action or where acts constituting fraud were, or could have been, litigated therein." *Id.* at 232 (alteration in original) (quoting *Intrinsic Fraud*, Black's

Law Dictionary (5th ed. 1979)). We followed the reasoning of courts in New York, Texas, and North Carolina, and concluded:

> Misrepresentations or concealment of assets made in negotiations leading to a voluntary separation and property settlement agreement later incorporated into a divorce decree represent matters intrinsic to the trial itself. In fact, a determination of each party's respective assets, far from being a collateral issue, would seem to be a central issue in a property settlement agreement.

Id. at 235. We rejected Husband's argument that Wife's alleged fraud was "extrinsic to the divorce action because it occurred two years prior to the action and prevented [Husband] from taking advantage of his right to an adversarial proceeding." *Id.* The settlement agreement was submitted to the court for incorporation into the judgment of divorce, and therefore Husband "had every opportunity to examine these representations through discovery methods or in court. Instead, he chose to file an uncontested answer and permitted the matter to go to judgment." *Id.* at 235–36 (footnote omitted). We likened misrepresentations in settlement agreements to perjury, which has long been held to be intrinsic fraud. *Id.* at 236 (citing *Hamilos v. Hamilos*, 297 Md. 99 (1983)).

Facey provides another instructive example of intrinsic fraud. In 2006, as part of their divorce settlement agreement, Roberto Facey executed a confessed judgment note in the amount of $75,000 in favor of his former wife, Esther. *Facey*, 249 Md. App. at 594, 596. Unfortunately, Esther suffered debilitating strokes in 2008 and 2009. *Id.* at 596. In 2011, the couple's daughter, Soralla Facey de Otts, filed in the circuit court a "Complaint for Confession of Judgment" on behalf of her mother, based on the 2006 note. *Id.* at 594. Soralla asserted authority to file suit on behalf of her mother based on a power of attorney

purportedly executed by Esther in 2008. *Id.* Roberto timely moved to vacate the 2011 confessed judgment, alleging duress, undue influence, misrepresentation, and limitations. *Id.* The court denied Roberto's motion to vacate. *Id.*

More than seven years later, Roberto moved to vacate the 2011 judgment pursuant to Rule 2-535(b). *Id.* In this motion to vacate filed in 2018, Roberto claimed that the power of attorney relied on by Soralla to file the 2011 action was fraudulent, asserting that it had been "backdated to appear as though it was executed prior to Esther's disability and that it did not contain Esther's authentic signature." *Id.* After an evidentiary hearing, the circuit court concluded that, although Roberto produced sufficient evidence to establish that the power of attorney was "both fraudulently procured and a forgery," that evidence did not amount to extrinsic fraud necessary to permit the court to exercise its revisory power under Rule 2-535(b). *Id.* at 595.

We affirmed the circuit court's determination that the fraud related to the power of attorney constituted intrinsic fraud. *Id.* We reasoned that "the fraudulent and forged Power of Attorney did not prevent Roberto 'from exhibiting fully his case,' or 'keep[] him away from court.'" *Id.* at 635 (quoting *Throckmorton*, 98 U.S. at 65). Moreover, we held that the power of attorney "was not collateral to the entry of the confessed judgment or the issues tried in the motions hearing." *Id.* at 636. Thus, because the power of attorney was before the court, we concluded that "its fraudulent nature could have been exposed during

the motions hearing." *Id.* As such, the fraud did not constitute extrinsic fraud. *Id.* at 637;[5] *see also Marney*, 91 Md. at 371–72 (rejecting appellant/employer's claim of extrinsic fraud resulting from perjured testimony because "by reason of its own neglect" it failed to exercise the "care in the preparation of the case as was required of it").

Here, Ms. Malik contends that Mr. Jatain's failure to file the settlement agreement with the papers for an uncontested divorce constituted extrinsic fraud. Thus, in her view, the circuit court properly vacated the divorce judgment pursuant to Rule 2-535(b). Although we understand that Ms. Malik, as a self-represented litigant, may not have fully appreciated the consequences of not having the settlement agreement incorporated (or incorporated but not merged) into the divorce decree, the caselaw does not support a finding of extrinsic fraud in this case. Ms. Malik appeared virtually and participated in the magistrate's hearing. Upon questioning by the magistrate, Ms. Malik explicitly confirmed that she and her husband had distributed all of their property. Ms. Malik further acknowledged that she was not making a "request for alimony, monetary award or retirement benefits" and confirmed her understanding that she could not "come back to the [c]ourt at a later time and make a claim" related to those matters. In her testimony in circuit court on her motion to revise, Ms. Malik stated that, although she did not advise the magistrate of the settlement agreement, she nevertheless told the magistrate that all

[5] Although not relevant to the instant case, the *Facey* Court further held that the forged power of attorney did not affect the court's subject matter jurisdiction. 249 Md. App. at 637–38.

property issues were "resolved." Ms. Malik's circuit court testimony indicates that she understood the importance of filing the agreement in court, but candidly acknowledged that "my mistake was that I didn't have an attorney and I trusted [Mr. Jatain]."[6] Moreover, Ms. Malik conceded that she "didn't ask any questions regarding [the] agreement" at the magistrate's hearing. The record is clear that Ms. Malik had every opportunity to bring the settlement agreement to the magistrate's attention and request that it be incorporated or approved in some fashion by the court. She failed to do so, and there is no evidence in the record that Mr. Jatain prevented Ms. Malik from requesting the court to incorporate the agreement, with or without merger, into the divorce judgment. He certainly did not "keep [her] away from court." *See Facey*, 249 Md. App. at 635. In short, the court's failure to incorporate or approve the settlement agreement resulted at least in part from Ms. Malik's own neglect and failure to exercise the "care in the preparation of the case as was required of [her]." *Marney*, 91 Md. at 372. Moreover, the record is clear that Ms. Malik did not comply with the well-settled standard that "a litigant has a duty to keep [herself] informed

[6] Although Ms. Malik testified that she trusted Mr. Jatain, she did not assert that a confidential relationship existed between them, and therefore the circuit court made no findings as to any such relationship. Nor does she make such an argument on appeal. In any event, the record is insufficient to satisfy the factors necessary to prove the existence of a confidential relationship. These factors include "the age, mental condition, education, business experience, state of health, and degree of dependence of the spouse in question." *Bell v. Bell*, 38 Md. App. 10, 14 (1977). The parties are both in their 40s, there was no evidence that Ms. Malik suffers from any problems with her mental or physical health, she holds a master's degree in business administration, and she has worked in well-paid managerial positions. Ms. Malik certainly did not establish that she was dependent on Mr. Jatain. Although the issue was not raised, the trust Ms. Malik placed in Mr. Jatain does not appear to result from any confidential relationship.

as to the progress of a pending case[,]" *Das v. Das*, 133 Md. App. 1, 19 (2000), in that she was unaware that the settlement agreement was not filed in court.

Finally, the case at bar is analogous to *Hresko* where we held that Wife's alleged fraud in the negotiation of a marital settlement agreement constituted intrinsic fraud because Husband had the opportunity to challenge in court Wife's alleged misrepresentations related to the settlement agreement. Here, Ms. Malik likewise had the opportunity before the magistrate to challenge or expose Mr. Jatain's alleged fraud related to his failure to file the settlement agreement in the divorce case. We hold that any fraud in this case was intrinsic, and therefore the court erred in vacating the judgment based on its finding of extrinsic fraud.[7]

C. THE PROCEDURAL DEFICIENCIES DO NOT CONSTITUTE EXTRINSIC FRAUD

Ms. Malik asserts that multiple procedural deficiencies resulting from Mr. Jatain's handling of the uncontested divorce constitute extrinsic fraud sufficient to vacate the divorce judgment. Ms. Malik generally alludes to the fact that Mr. Jatain prepared all of the forms to obtain an uncontested divorce. She specifically claims that the affidavit of service of the divorce complaint is fraudulent because she avers that she was never served with the complaint. In addition, although she admits that she signed the last page of the answer to the complaint at Mr. Jatain's request, she stated that she did not

[7] Although the court erred in vacating the judgment of divorce, both parties acknowledged at oral argument that, irrespective of our decision in this case, nothing precludes Ms. Malik from attempting to prove the terms of the settlement agreement pursuant to applicable contract law.

contemporaneously receive a copy of the answer that Mr. Jatain eventually filed with the court. She claims that she first saw the complaint, answer, and other court-filed documents related to the divorce when she requested a copy of all filings from the clerk of court in September 2022. Ms. Malik further notes that Mr. Jatain signed the certificate of service for the answer, meaning that he served the answer on himself.

Because the circuit court found her credible, we accept the accuracy of the procedural oddities identified by Ms. Malik. None of these procedural issues, however, amount to extrinsic fraud in the context of this case. We fail to see how the insufficiency of service of process or her failure to receive copies of pleadings could constitute extrinsic fraud in light of Ms. Malik's attendance and participation in the merits divorce hearing where she could have raised the issue of the settlement agreement and its incorporation into the judgment. The procedural deficiencies identified by Ms. Malik did not prevent her from ensuring that the magistrate was aware of the settlement agreement, nor did it preclude her from asking the court to incorporate, in some fashion, the agreement into the divorce judgment. Thus, to the extent the circuit court relied on these procedural deficiencies to vacate the judgment, the court erred.

CONCLUSION

Although we conclude that the circuit court's determination that the parties executed a written settlement agreement is not clearly erroneous, we hold that the court erred in vacating the divorce judgment based on extrinsic fraud.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

VACATING THE JUDGMENT OF ABSOLUTE DIVORCE IS REVERSED. COSTS TO BE PAID BY APPELLEE.