

Circuit Court for Prince George's County  
Case No. CAD 14-24014

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1076

September Term, 2016

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KELLY MIKEL WILLIAMS

v.

SHAUNA JEAN WILLIAMS

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Wright,  
Kehoe,  
Battaglia, Lynne A.,  
(Senior Judge, Specially Assigned)  
JJ.

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Opinion by Kehoe, J.

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Filed: November 16, 2018

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. *See* Md. Rule 1-104.

This appeal arises out of a judgment of the Circuit Court for Prince George's County that interpreted and enforced provisions of the parties' separation and property settlement agreement. Kelly Mikel Williams asserts that the trial court erred and presents eight issues, which we have consolidated and reworded:<sup>1</sup>

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<sup>1</sup> Appellant presents the following issues (some spelling and punctuation altered):

1. Was the trial court's ruling to allow Appellee the ability to opt out of the Voluntary Separation and Property Settlement Agreement, which unjustly prejudiced the Appellant, fair and legal when the Voluntary Separation and Property Settlement Agreement was the binding and ruling document in which the Parties agreed to use and the court was to abide by?
2. Was the court's ruling to allow the Appellee to denote a specific amount that she deemed acceptable, fair and legal when the Voluntary Separation and Property Settlement Agreement does not indicate a specific amount that either Party is entitled to after the execution of the refinance or sale of the property?
3. Was the court's denial of the Appellant's Motion for Reconsideration and Motion for Stay of Execution without granting the Appellant a fair hearing, which he requested, legally correct when Maryland Rule 2-311(f) requires the trial court to hold a hearing before rendering a decision disposing of a claim or a defense?
4. Was the trial court's ruling requiring Appellant to reimburse Appellee for her portion of the mortgage payments fair and legal when there were no punitive judgments against the Appellant in the Agreement or any court ruling that would constitute an unequal balance in the contributions of the Parties towards the mortgage, making a 50/50 split unequal and biased?
5. Was the trial court's ruling allowing the Appellee to no longer be required to make mortgage payments while the marital property was listed for sale and the property issues related to the marital property had not been finalized fair, legal or equitable?
6. Was the court ruling to allow the Appellee to benefit from the financial contributions from the Appellant towards the marital property fair and legal, when the Appellee has not contributed equally to the equity in the marital property?
7. Is it fair and legal for the court to allow the Appellee to receive a 50% equity share from the sale of the marital property when she is no longer contributing to the equity of the property; and the increase in equity is a direct result of the Appellant's sole contributions?

(1) Did the trial court err in its interpretation of the provisions of the marital settlement agreement regarding Mr. Williams's right to purchase Ms. Williams's equity interest in the parties' marital residence?

(2) Was the trial court's decision to hold Mr. Williams in contempt for violating the terms of the marital settlement agreement pertaining to time share credits based upon a proper interpretation of the relevant terms of the agreement relating to the parties' time share credits?

(3) Did the trial court abuse its discretion in denying Mr. Williams's motion for reconsideration and motion for stay of execution?

We can dispose of the first two issues quickly. Appellant's contentions are directed to the merits of issues that were litigated in the divorce proceeding and specifically resolved by the court's judgment of absolute divorce, which included a provision holding appellant in contempt for violating the terms of the parties' agreement as to the time share credits. The judgment of absolute divorce was entered on September 25, 2015. Appellant filed a timely notice of appeal, but the appeal was dismissed by this Court on January 13, 2016. Appellant did not seek further review of this Court's action. Therefore, the judgment of the circuit court is final and is not subject to further review on its merits. *See, e.g. Bank of New*

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8. Was the trial court's ruling to hold the Appellant in Contempt of Court and impose judgment upon him fair and legal when the Appellant, after filing legitimate motions to the court seeking a hearing was never given a ruling on the motions and the delays were a direct result of the courts lack of action?

*York Mellon v. Georg*, 456 Md. 616, 625 (2017) (“Res judicata . . . precludes the same parties from relitigating any suit based upon the same cause of action[.]” (citation omitted)).

This leaves us with appellant’s third argument, which boils down to a contention that the circuit court erred when it denied his motions to reconsider the merits of the 2015 judgment of divorce. These motions were filed on December 14, 2015 and March 22, 2016, more than thirty days after the judgment of divorce was entered. The circuit court’s authority to revise the judgment under those circumstances is set out in Md. Rule 2-535(b), which states:

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.

As we will explain, the concepts of “fraud,” “mistake,” and “irregularity” have clearly defined, and rather narrow, meanings in the context of motions to revise judgments. There is nothing in the record that suggests that the 2015 judgment was tainted by any of these flaws. Therefore, we will affirm the court’s judgment.

### **Background**

On August 27, 2014, Shauna Jean Dover (f/k/a Shauna Jean Williams) filed a complaint for limited divorce against Mr. Williams. On January 8, 2015, the Circuit Court for Prince George’s County granted Dover a limited divorce on the grounds of voluntary separation. At that time, both parties were represented by counsel. Simultaneously, the circuit court approved the terms of the parties’ Voluntary Separation and Property

Settlement Agreement dated January 8, 2015. The circuit court incorporated, but did not merge the separation agreement into its judgment. Contained within the separation agreement are the following relevant provisions (emphasis added):

#### 4. REAL PROPERTY

The Parties hereto presently own . . . [a] marital residence, [which] is subject to a mortgage for which the parties are jointly liable. The approximate amount of the mortgage lien is \$367,990.00. There are currently no other liens on the marital residence. The Parties agree not to further encumber the marital residence in any manner, except as provided in this Agreement.

\* \* \*

Husband agrees to refinance the marital residence in his name on or before September 5, 2015, and pay Wife fifty percent (50%) of the net equity in the home. *The net equity shall be computed by deducting all amounts due relative to the mortgage lien, delinquent homeowners association fees prior to September 5, 2015, and late monthly mortgage payment fees incurred prior to the execution of this Agreement. . . .*

Wife agrees to execute all papers necessary to facilitate the refinance of the marital residence to Husband within 10 days of receipt. If Husband does not or is unable to refinance the marital residence by September 5, 2015, then the Parties agree that the marital residence will be listed for sale, in good faith, by October 5, 2015, with a licensed competent real estate broker mutually selected by the Parties. . . .

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#### 5. TIME SHARE PROPERTY

The Parties jointly own the Hilton Grand Las Vegas timeshare. The parties are jointly liable for the existing mortgage of \$20,520.00 owed [to] the timeshare company. The parties recognize that the market value of the timeshare may be less than the debt owed. The Parties agree that Wife will refinance said timeshare in her sole name. . . . *Husband agrees to execute all necessary documents to facilitate the refinance/transfer of ownership within 10 days of receipt to Wife.* If Wife does not or is unable to refinance said timeshare by February 28, 2015, then Wife will list the timeshare for sale by March 30, 2015. The Parties agree to equally share liability for any mortgage deficit which may exist after the sale of the timeshare.

Williams was unable to obtain a loan large enough to allow him to refinance the marital home with sufficient equity to pay Dover her net share of the marital home's equity and Dover refused to sign loan papers that would have yielded a lesser amount to her. Dover, on the other hand, was able to refinance the time share debt but then learned that Williams had used some of the Hilton Grand timeshare points. Dover contended that the points used by Williams were part of her equitable share as per the separation agreement.

This case's procedural history is very complicated with numerous hearings, court orders, motions to reconsider, and other matters. It is not necessary to discuss this history in detail. Eventually, each party filed a motion for contempt against the other and Dover filed a supplemental complaint for an absolute divorce. The circuit court held a hearing on these issues on September 9, 2015. Relevant to the issues on appeal, the court: (1) ruled in favor of Dover and against Williams on the parties' cross-motions for contempt, and awarded Dover attorney's fees totaling \$500; (2) entered a judgment against Williams in favor of Dover in the amount \$2,498.50; and (3) granted the parties an absolute divorce.

A few months after the absolute divorce decree, on December 14, 2015, Williams filed a motion to revise the judgment pursuant to Md. Rule 2-535. On March 22, 2016, Williams filed another motion pursuant to Md. Rule 2-535. On May 11, 2016, the court conducted a hearing on these and other motions. The court denied both of Williams's Rule 2-535 motions, and this appeal followed.

### **Analysis**

As we have explained, the only issue before us is whether the trial court abused its discretion in denying Williams’s motions to revise the judgment pursuant to Md. Rule 2-535(b), which states “[o]n 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” have narrow definitions in the context of Rule 2-535(b) motions to revise a judgment. *Early v. Early*, 338 Md. 639, 652 (1995).

In order to prevail on a Rule 2-535(b) motion, and among other requirements, the movant must show by clear and convincing evidence that fraud, mistake, or irregularity affected the judgment under consideration. *See Jones v. Rosenberg*, 178 Md. App. 54, 74 (2008). Courts have discretion in deciding whether to grant a motion to revise a judgment. An appellate court will not reverse the trial court’s decision unless the reviewing court concludes that the trial court abused its discretion. A court abuses its discretion when it makes a ruling that is:

well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

*North v. North*, 102 Md. App. 1, 14 (1994).

## **1. Fraud**

Fraud involves a misrepresentation made to a person with the intention that the person relies on the false statement to his or her detriment. To constitute “fraud” for the purposes of Md. Rule 2-535(b), the fraud must be “extrinsic,” that is, directed at the fairness of the court proceeding that resulted in the judgment. Extrinsic fraud occurs when “the unsuccessful party has been prevented exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff.” *Pellegrino v. Maloof*, 56 Md. App. 338, 347 (1983).

In his motions for reconsideration, Williams asserted that the trial court erred in some of its rulings during the divorce litigation by: (1) failing to find that Dover violated the separation agreement by not paying her share of the mortgage and HOA fees for the marital residence; (2) defining Dover’s “equity” share of the marital property in the agreement incorrectly; and (3) placing unfair financial burdens on Williams, which required an emergency hearing to resolve. These assertions do not rise to the level of fraud, much less extrinsic fraud.

## **2. Mistake**

In the context of a motion to revise a judgment, the concept of “mistake” “is limited to a jurisdictional error, i.e. where the court has no power to enter the judgment.” *Tandra S. v. Tyrone W.*, 336 Md. 303, 317 (1994). This commonly happens when a court enters a judgment for a party over which the court has no jurisdiction, *id.*, or when a clerical error



by a courtroom clerk, results in the entry of a judgment that is different from what the court intended. *See Waller v. Maryland Nat'l Bank*, 332 Md. 375, 377 (1993).

In contrast, “[a] judgment that is simply wrong—one that has no legal foundation and is the product of judicial error”—may not be corrected in a Rule 2-535(b) proceeding. *Home Indemnity. Co. v. Killian*, 94 Md. App. 205, 217 (1992).

In his motions for reconsideration, Williams did not assert the judgment was induced by mistake. He alleged no jurisdictional or clerical error on behalf of the court or its staff; instead, he took issue with the substance of the court’s rulings. We understand that Williams is unhappy with the substantive decisions made by the circuit court, but this was not a sufficient basis for the circuit court to find that the judgment was entered as the result of a mistake.

### 3. Irregularity

The definition of irregularity is “the doing or not doing of that, in the conduct of a suit at law, which, conformable with the practice of the court, ought or ought not to be done.” *Berwyn Fuel & Feed Co. v. Kolb*, 249 Md. 475, 479 (1968). An irregularity under Md. Rule 2-535(b) must be more than a “mere error,” a general deviation from truth or accuracy. *Ventresca v. Weaver Bros.*, 266 Md. 398, 405-06 (1972). Instead, it must be “a failure to follow required process or procedure.” *Early*, 338 Md. at 652.

Examples of irregularity include the failure of the court staff to provide notice to litigants by, for example, a court clerk’s failure to mail copies of an order to all parties, *id.*, or when the clerk sends such a notice to a wrong address. *Estime v. King*, 196 Md. App.

296, 309 (2010); *Mercy Medical Center v. United Healthcare of the Mid-Atlantic*, 149 Md. App. 336, 375–76 (2003).

Williams did not state a proper claim of irregularity in his motions for reconsideration. Nowhere did he allege that the circuit court made errors regarding its ordinary processes and procedure, such as notice or service of process.

In conclusion, Williams’s arguments go to the merits of the trial court’s judgment, as opposed to whether fraud, mistake, or irregularity tainted the process by which that judgment was reached. The circuit court did not err when it denied his motions.<sup>2</sup>

**THE JUDGMENT OF THE CIRCUIT  
COURT FOR PRINCE GEORGE’S  
COUNTY IS AFFIRMED. APPELLANT TO  
PAY COSTS.**

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<sup>2</sup> Mr. Williams is losing this appeal on what might be termed a legal technicality. However, were we to look past his failure to address the requirements of Rule 2-353(b) and review the substance of the trial court’s decisions, we would affirm its judgment. There was substantial evidence to support each of the court’s findings of fact; its interpretation of the relevant provisions of the separation agreement was correct; and the court did not abuse its discretion in its rulings on the parties’ cross-motions for contempt.