Circuit Court for Anne Arundel County
Case No. C-02-FM-18-003392

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1513

September Term, 2022

HEATHER M. CHISHOLM

v.

JOHN A. CHISHOLM

Graeff,
Nazarian,
Tang,

JJ.

Opinion by Nazarian, J.

Filed: August 16, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

After Heather Chisholm ("Wife") filed for a divorce from her husband John Chisholm ("Husband") in 2018, the parties negotiated and signed a Marital Settlement Agreement ("MSA") that resolved their disputes over alimony, child support, and property distribution. They were granted an absolute divorce in the Circuit Court for Anne Arundel County in July 2020 and, at their request, the court incorporated the MSA (but didn't merge it) into the divorce order. More than a year later, in November 2021, Wife filed a motion asking the court to set aside the MSA, claiming that Husband had concealed assets from her fraudulently during the MSA negotiations and that she was under duress throughout the divorce proceedings because Husband threatened to withhold marital funds and fight for custody of the children if she did not comply with his demands. The circuit court denied Wife's motion after finding that she had failed to establish extrinsic fraud, she appeals, and we affirm.

I. BACKGROUND

The parties were married on April 2, 2010 and have three minor children together—twin daughters born in 2013 and a son born in 2017. Throughout the marriage, Wife was a stay-at-home mom and Husband was the president and forty percent owner of Atlantic Forest Products, a privately held company dealing in lumber commodities and specialty wood products that he started with several partners in 1991.

Wife claims that sometime before August 2018, "the parties had been experiencing increasing difficulties," and that Husband had "insisted that [Wife] file for divorce and stopped giving her any money to pay for household and her and the children's expenses

until she filed." She also claims that "[i]n addition to refusing to give [Wife] any money or access and/or knowledge of any martial assets, [Husband] also threatened [Wife] and used the children as pawns, saying he would fight for 50/50 custody if she did not do as he wanted."

In August 2018, Wife filed a complaint in the circuit court seeking absolute or limited divorce, *pendente lite* relief, and other relief. The complaint alleged adultery, constructive desertion, and physical separation as grounds.[1] On February 7, 2019, a *pendente lite* hearing was held on the issues of child support, alimony, and counsel fees.[2] At the hearing, at which both parties were represented by counsel, Wife made no mention of threats as she filed for divorce, except that she alleged that the weekly allowance Husband was giving her at that time was insufficient to cover her expenses.

Wife testified that she had no income or access to marital funds and that she needed substantially more support than Husband was currently providing to maintain the lifestyle she and the children had grown accustomed to during the marriage. She explained that she had been a full-time homemaker since before the twins were born, and that when the parties lived together, rather than having equal access to marital funds, Husband would give Wife

[1] Husband filed his answer and countercomplaint on October 9, 2018, and Wife answered the counterclaim on October 30, 2018.

[2] Because the parties had entered into a final consent order regarding child custody and access that was approved by the court on February 7, 2019, those issues were not addressed at the hearing. The order provided that the parties would have joint legal and shared physical custody of the minor children once Husband moved out of the marital home, with Wife having primary physical custody and Husband having access.

two large checks annually,[3] and she used those funds to pay expenses for the children, home, food, medical, pets, and gas. She testified that at the time of the hearing, Husband was paying all the house-related expenses, private school tuition, and giving her $1,125 per week, but that this was insufficient to cover the family's remaining expenses and her legal fees and that she had had to dip into pre-marital funds and incur credit card debt to make ends meet. Ultimately, she claimed, in addition to Husband continuing to pay for the house-related expenses, school tuition, speech therapy, and her car, she needed $17,000 per month in direct support from Husband to maintain the *status quo* for herself and the children.

Wife argued that her requested level of support was appropriate given Husband's income, an issue on which both parties presented expert testimony. As the hearing court summarized it, Wife's expert "presented a rosy picture of Husband's income," testifying that "Husband had actual income of $1.007 million in 2016, $2.418 million in 2017, and $2.228 million in 2018." Husband's expert, on the other hand, "painted a bleak picture of [Husband's] company's earnings . . . due to a sharp down-turn in the lumber commodities market," and testified that "Husband's 2018 income was $1.390 million and that beginning in November [2019] his monthly wages were reduced to $46,833." Additionally, Husband claimed $45,297 in core monthly expenses and testified that he had been covering his monthly deficit by using tax distribution funds, credit cards, and withdrawals from 529

[3] She testified that the last of these checks was for $90,000, but she did not say when she received it.

plans. He also testified that he was willing to pay $6,000 per month toward the support of Wife and children, plus pay the mortgage, home equity line of credit, insurance on the marital home, and to cover some of the items listed on the core monthly expense statement.

On February 21, 2019, a magistrate issued its report and recommendation. The magistrate accepted Husband's expert's "testimony regarding the company's financial situation" and found that although Wife's expert "may have accurately presented the historic earnings of both the company and of Husband over the last three years, . . . those figures do not reflect the current downturn in the lumber commodities market and its adverse impact upon the company's finances and profitability." The magistrate also found that Wife "actually ha[d] more cash on hand than d[id] Husband" and that Wife was "requesting more support than Husband currently earns." And the magistrate explained that although it is "generally true" that "it would be only fair to have Husband pay a sufficient sum so that [Wife] and the children can maintain their standard of living," doing so in this case would be "most unfair" because it would "saddle Husband with an obligation which he is currently unable to meet due to factors beyond his control."

The magistrate judge recommended that Husband should "continue to pay the mortgage, home equity line of credit and insurance for the family home, the monthly payment for the Denali driven by Wife, the children's [private school] tuition . . . and [one child's] speech therapy, plus $6,000 per month," for a total of "$22,973 [per month], or 93% of Husband's current net take-home pay." The magistrate also recommended that Husband should "be obligated to continue the family's health insurance and pay for all

uncovered medical expenses," and that the parties should "return to mediation" to resolve the issue of alimony before a final order. On May 15, 2019, the circuit court issued a *pendente lite* order based upon the magistrate's report and recommendation.

After the *pendente lite* hearing, the parties separated and commenced (or continued) negotiations toward the terms of a Marital Settlement Agreement ("MSA"), and executed the MSA before witnesses and a notary on December 5, 2019. The MSA provided Wife with nonmodifiable alimony of $10,000 per month for nine years, child support in the amount of $13,000 per month, access to health insurance through Husband's group plan, the family home,[4] the parties' 2017 GMC Denali, and a two-million-dollar monetary award Husband would pay over fifteen years. Additionally, the MSA stated that Wife was represented by counsel with respect to the negotiation and execution of the agreement, that "there ha[d] been [a] full and complete financial disclosure of the . . . financial circumstances of the other party," and that each party was "entering into th[e] Agreement freely and voluntarily," acknowledging that "th[e] Agreement is a fair and reasonable agreement, and . . . not the result of any fraud, duress, or undue influence exercised by either party upon the other":

> 28. INDEPENDENT COUNSEL
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> * * *
>
> Wife hereby acknowledges that Paul J. Reinstein, Esquire, Maureen Glackin, Esquire and Reinstein, Glackin, & Herriott,

[4] Under the agreement, Wife became solely responsible for all payments associated with the home, and she was required within 3 years either to sell the home or refinance the mortgage and home equity line of credit and remove Husband's name from those obligations, at which time Husband would execute a deed transferring title to her.

LLC, have represented her and rendered legal advice to her with respect to the marital rights of the parties and in connection with the negotiation and execution of this Agreement and that she further acknowledges that she is satisfied with the services rendered by her counsel in connection with this case.

29. FINANCIAL DISCLOSURE

A. *Each party acknowledges that there has been full and complete financial disclosure of the income, assets, liabilities, and financial circumstances of the other party.* Each party acknowledges that this Agreement is entered into after formal discovery, during which each party provided the other with signed Answers to Interrogatories and Responses to Request for Production of Documents. Each party has deposed the other. Wife acknowledges that she has engaged the services of a certified public accountant who has reviewed Husband's financial circumstances, analyzed Husband's income and expenses, and valued Husband's ownership interests in Atlantic Forest Products, LLC . . . . Through the discovery process, each party has obtained records of the other party's bank accounts, retirement assets, and other financial circumstances. *Each party acknowledges that he or she has had full opportunity to discover, evaluate, and investigate all material information, financial or otherwise, in the possession of the other party. Each party is satisfied with the nature and extent of the disclosures made prior to the execution of this Agreement, as well as the terms and provisions of this Agreement, and each has had the benefit of the advice of counsel of his or her own selection*. . . . The parties have been advised by their respective counsel of their right to compel further discovery and inspection of the other party's financial books and records, both business and personal, and of their right to have accountants, appraisers or others further investigate, appraise, or evaluate the other party's business and property. Each party has waived these rights and instructed his or her respective counsel not to take any further steps, themselves or through others, in connection with discovery, inspection, investigation, appraisal, or evaluation of the other party's business or property. *Each party is entering into this Agreement freely and voluntarily, and each party regards the terms of this Agreement as a fair and reasonable compromise*

> *and settlement.* In the event that any marital asset was not disclosed during the litigation, then the non-disclosing party shall pay to the other party seventy five percent (75%) of the fair market value of that asset.
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> B. Wife accepts the benefits of this Agreement as consideration for her waiver of her right to seek a determination by a court of her rights to alimony, marital property, and monetary award. . . . *Wife acknowledges that she is voluntarily entering into this Agreement after having conducted formal discovery of Husband's financial circumstances, and that she is voluntarily entering into this Agreement after having reviewed her expert's valuation of Husband's ownership interest of his separately titled assets.*
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> * * *
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> 38. FREE AND VOLUNTARY AGREEMENT
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> The parties mutually agree that in entering into this Agreement, each party signs this Agreement freely and voluntarily for the purpose and with the intent of fully settling and determining all of their respective rights and obligations growing out of or incident to their marriage. Each party was represented by independent counsel of his or her own selection in the negotiation and execution of this Agreement. *Husband and Wife acknowledge that this Agreement is a fair and reasonable agreement, and that it is not the result of any fraud, duress, or undue influence exercised by either party upon the other*, or by any person or persons upon either party.

(Emphasis added). The parties filed the executed MSA in the circuit court on December 26, 2019.

On July 27, 2020, Wife, by her attorneys, filed an amended complaint for absolute divorce, in which she requested that the Court "incorporate but not merge" the MSA "into the Judgment of Absolute Divorce." Husband filed an answer the following day requesting that Wife receive the relief she sought. A hearing was held on July 30, 2020, at which Wife appeared remotely with counsel, Husband's counsel appeared without Husband (who was

excused from appearing), and the court heard testimony. The following day, the court issued a Judgment of Absolute Divorce granting Wife an absolute divorce from Husband, ordering that the parties' February 5, 2019 final consent order on child custody and access should continue in full force and effect, and ordering that "all terms and conditions of the written [MSA] . . . are hereby incorporated but not merged into th[e] Judgment by reference."

More than a year later, on November 16, 2021, Wife filed a motion to set aside the MSA, claiming that she "agreed to it because of [Husband]'s fraudulent actions and the duress she experienced because of [Husband]'s controlling behavior and threats."[5] Wife claimed that during their marriage, Husband "became increasingly controlling, bullied [Wife] to the point of emotional abuse[,] and was increasingly secretive about the parties' finances," and that he forced her to "compl[y] with his desire for her to file for divorce" by "cut[ting her] off completely" from access to marital funds and "threaten[ing] her with taking the children away from her or not pay[ing] for their school if she did not agree to his demands." She also claimed that since entering into the MSA and being granted an absolute divorce, she had discovered that Husband had lied about his income in the *pendente lite* hearing and during their subsequent MSA negotiations:

> Upon learning about [Husband]'s even more lavish lifestyle, [Wife] obtained copies of [his 2018 and 2019] tax returns. [Wife] was startled and upset to learn that her expert's calculation was not "rosy" but conservative and that

[5] Wife also filed simultaneously a motion to modify child support, which Husband answered on December 20, 2021. The court later denied Wife's request for a hearing on the motion to modify child support.

> [Husband]'s expert's testimony was fantasy. [Husband]'s gross earnings both in 2018 and 2019 was over $2,500,000.00. . . . [Wife] was blindsided by [Husband]'s deception regarding his ongoing income. She only became suspicious after the divorce when she started learning about his huge purchases and even more luxurious lifestyle.

Ultimately, Wife argued that because Husband's threats and lies had induced her to sign the MSA, the court should set aside the agreement:

> Because of [Husband]'s ongoing harassment and bullying regarding custody of the children and finances, [Husband]'s control of the family finances, his testimony that he was not making ends meet and he would only make $500,000.00 in 2019 due to the market downturn, and the Magistrate's complete acceptance of [Husband]'s testimony regarding income and what he should pay, [Wife] agreed to the Marital Settlement Agreement in December 2019.
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> * * *
>
> [Husband]'s deception [regarding his income] caused [Wife] to execute the Marital Settlement Agreement and accept less alimony, income than she was entitled to and an unnecessary and unjust protracted payment of the monetary award.
>
> * * *
>
> This Court should set aside the Marital Settlement Agreement executed in December 2019 because [Husband] intentionally withheld information regarding his income and financial status. Furthermore, [Husband]'s repeated bullying and threats to [Wife] regarding the children and money intimidated her, despite the fact she was represented by counsel, and caused her to enter into an agreement that resulted in her, among other things, receiving alimony and child support that were woefully inadequate, considering [Husband]'s income and the parties' standard of living. She also agreed to a lengthy payout of a monetary award but later discovered evidence that [Husband] had a far greater ability to pay than he represented. . . . [Husband]'s total control of the finances and information regarding his true income and wealth contributed to [Wife]'s duress and ultimate decision to enter into what was later revealed a highly inequitable agreement.

Husband opposed Wife's motion to set aside the MSA.[6] He argued that because the MSA was incorporated into the final divorce judgment issued more than a year before, the court could set aside the MSA only in the case of extrinsic fraud, mistake, or irregularity. And he contended that under *Hresko v. Hresko*, 83 Md. App. 228, 236 (1990), Wife had alleged intrinsic rather than extrinsic fraud, so her motion should be dismissed. Wife replied.[7]

On September 26, 2022, the court held a hearing on the parties' motions and, in an order docketed on September 28, 2022, the court found that Wife had failed to allege extrinsic fraud and denied the motion to set aside the MSA.[8] On October 3, 2022, Wife filed a motion asking the court to revise or reconsider its decision, and the court denied that motion on October 18, 2022. On November 1, 2022, Wife timely appealed both the September 28 and October 18 orders.[9] Husband moved to dismiss Wife's appeal on

[6] Husband styled his motion as a "Motion to Dismiss" Wife's motion to set aside the MSA.

[7] Alongside his opposition to Wife's motion to set aside the MSA, Husband also filed a petition to modify child access, in which he requested that physical custody be shared equally between the parties. Wife then filed a motion to dismiss Husband's petition. The court denied Wife's motion to dismiss, and at the time Wife noted this appeal, the issues of custody and child support modification remained pending before the circuit court.

[8] The court's order stated that the court was granting "[Husband]'s Motion to Dismiss [Wife]'s Motion to Set Aside Marital Settlement Agreement."

[9] Because Wife filed her motion for reconsideration within ten days of the trial court's September 28 order, her notice of appeal was timely as to the September 28 order when it was filed within 30 days of the court's October 18 order denying her motion to reconsider. Md. Rule 8-202(c).

December 7, 2022, and on January 10, 2023, we denied the motion without prejudice to Husband to seek that relief in his brief.

II. DISCUSSION

There are two questions before us on appeal:[10] *first*, whether Wife's appeal must be dismissed because the September 28 and October 18 orders are not appealable; and *second*, whether the court erred in granting Husband's motion to dismiss Wife's motion to set aside the MSA.

A. We Deny Husband's Motion To Dismiss Wife's Appeal.

Husband has moved to dismiss Wife's appeal because, he says, the September 28 and October 18 orders are not appealable. A party's right to appeal an order of a circuit court is defined by statute. *In re C.E.*, 456 Md. 209, 220 (2017). Under Maryland Code (1973, 2020 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article, appeals generally may be taken only from a final judgment of the trial court. A final judgment is

[10] Wife briefed her Questions Presented as follows:

> 1. Did the Trial Court err when it found that [Wife]'s claim of duress was not a legal basis to support her claim that [Husband] had committed extrinsic fraud and, therefore, dismissed [Wife]'s Motion to Set Aside Marital Settlement Agreement?
>
> 2. Is duress a proper basis to set aside an enrolled judgment that incorporated a Marital Settlement Agreement?

Husband briefed his Question Presented as follows:

> Did the trial court err when it found that [Wife]'s claim of duress was insufficient to support her claim that [Husband] committed extrinsic fraud and as a result, dismissed [Wife]'s Motion to Set Aside Marital Settlement Agreement which was incorporated into an enrolled judgment?

one that is "'so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.'" *Peat, Marwick, Mitchell & Co. v. L.A. Rams Football Co.*, 284 Md. 86, 91 (1978) (*quoting United States Fire Ins. Co. v. Schwartz*, 280 Md. 518, 521 (1977)). Conversely, an order that "adjudicates fewer than all of the claims in an action . . . , or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action . . . is not a final judgment[.]" Md. Rule 2-602(a). "In considering whether a particular court order or ruling constitutes an appealable judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case." *In re Samone H.*, 385 Md. 282, 298 (2005).

An order that's not a final judgment is an interlocutory order. *Id.* Interlocutory orders are not appealable unless they fall within one of three exceptions to the final judgment rule: "[(1)] appeals from interlocutory orders specifically allowed by statute; [(2)] immediate appeals permitted under Maryland Rule 2-602; and [(3)] appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Salvagno v. Frew*, 388 Md. 605, 615 (2005).

The rule that only final orders and some interlocutory orders are appealable "aims to 'promote judicial economy and efficiency' by preventing piecemeal appeals after every order or decision by a trial court." *In re C.E.*, 456 Md. at 221 (*quoting Sigma Reprod. Health Ctr. v. State*, 297 Md. 660, 665 (1983)). Indeed, in *Hazlehurst v. Morris*, the

Supreme Court of Maryland (at the time the Court of Appeals of Maryland)[11] reiterated that the underlying purpose of the finality requirement is ensuring that all errors can ultimately be disposed of in a single appellate proceeding:

> The law has been clearly settled in this State, that no appeal can be prosecuted to this Court until a decision has been had in the Court below, which is so far final, as to settle and conclude the rights of the party involved in the action, or denying to the party the means of further prosecuting or defending the suit. When the proceedings below shall be terminated, an appeal will then lie, and all the errors of the Court below, in the progress of the cause, will be proper subjects for complaint of the party, and for the correction of this Court.

28 Md. 67, 71 (1868) (cleaned up).

Husband claims that the appealed orders are not appealable because they are neither final orders nor appealable interlocutory orders. He argues that the orders are not final because "inasmuch as the issues of custody and child support modification remain pending before the Circuit Court, it cannot be said that all of the rights of the parties have been concluded." We disagree.

1. The order of absolute divorce was a final order.

First, the July 2020 judgment of absolute divorce, into which the MSA was

[11] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

incorporated, was a final order. Maryland Code (1984, 2019 Repl. Vol.), § 8-213(b) of the Family Law Article ("FL") states that "[a]ny decree of annulment or of limited or absolute divorce in which the court reserves any power under this subtitle [(*i.e.*, Subtitle 2: Property Distribution in Annulment and Divorce)] is final and subject to appeal in all other respects." At the time the divorce order in this case issued, that order resolved the disputes of the parties on the issues of divorce, alimony, property distribution, and child support and custody. It reserved nothing for later determination except, as in all divorce cases between parties with minor children, the circuit court retained continuing jurisdiction over child custody and support. *See Haught v. Grieashamer*, 64 Md. App. 605, 611 (1985) ("Child support is one of those matters over which the court has a continuing jurisdiction. No order establishing an amount of such support, however final for other purposes, is beyond modification at any time . . . ."); *Lieberman v. Lieberman*, 81 Md. App. 575, 587 (citing *Haught* with approval). Thus, the order was final.

Moreover, the order was final under FL § 8-213(b) even if, at the time it was issued, the court *had* reserved child support and custody for later determination. Although FL § 8-213(b) applies specifically in cases where the court has reserved decision on marital property, courts have applied it more expansively to include divorce orders where the circuit court reserved on issues other than marital property distribution. *See, e.g.*, *Davis v. Davis*, 97 Md. App. 1, 18 (1993) (holding that order granting a divorce was final and appealable even though the court had "reserved for later" the issues of alimony and counsel fees), *aff'd*, 335 Md. 699 (1994).

And even if the judgment of absolute divorce were not automatically appealable under FL § 8-213(b), we are permitted to enter a final judgment as to the divorce claim on our own initiative under Maryland Rule 8-602(g)(1)(C). In cases involving multiple claims, Maryland Rule 2-602(b)(1) authorizes a trial court to direct the entry of final judgment as to one or more, but fewer than all claims in the case if the trial court expressly determines that there is no just reason for delay. In *Pappas v. Pappas*, 287 Md. 455, 465–66 (1980), the Court signaled that a trial court had discretion under this Rule to certify a divorce judgment as final where the trial court had left open several issues including "the amount to be paid for child support." *Id.* at 463. And even where the trial court hasn't made such a certification, Rule 8-602(g)(1)(C) permits an appellate court to "enter a final judgment on its own initiative" if it determines that the trial court *could have* certified a final judgment as to one or more of the claims under Rule 2-602(b). So because the trial court could have certified the order of absolute divorce as final as to the issues of divorce, alimony, and marital property division, we have discretion to enter a final judgment on our own initiative under Rule 8-602(g)(1)(C) as to those claims.

2. The appealed order is the functional equivalent of a denial of a motion to reconsider an appealable final order and is therefore itself an appealable final order.

Wife moved to set aside the MSA. Since the MSA was incorporated into the judgment of absolute divorce, her motion essentially was a motion to revise the divorce order under Maryland Rule 2-535. It wasn't successful, for reasons we'll address below, but that was the substantive ask. And the trial court and the parties treated it as such in the

circuit court proceedings. The parties focused their arguments and the court based its decision on whether Wife had alleged grounds sufficient for the court to exercise its revisory power pursuant to Rule 2-535. *See Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997) ("A motion may be treated as a motion to revise under Md. Rule 2-535 even if it is not labeled as such."), *opinion adhered to on reconsideration*, 122 Md. App. 566 (1998).

Since the divorce order was final as to the issues of divorce, alimony, and property division, Wife's motion to set aside the MSA served effectively as a motion to revise a final order. And when the court denied her motion, it "'den[ied] [her] means of further prosecuting or defending [her] rights and interests in the subject matter of the proceeding.'" *Peat*, 284 Md. at 91 (*quoting Schwartz*, 280 Md. at 521). Indeed, as to divorce, alimony, and marital property, there is no "further order . . . to be issued" and no "further action . . . to be taken in the case." *In re Samone H.*, 385 Md. at 298. Although, as Husband notes, "the issues of custody and child support modification remain pending before the Circuit Court," any appeal of the court's decision on those issues wouldn't encompass the property issues Wife raised in her motion and raises here. The court's September 28 order[12] denying Wife's motion to set aside the MSA was, therefore, a final, appealable order.

[12] Because the September 28 order is appealable, we need not decide whether the October 18 order is appealable as well. That said, it likely isn't. Wife's motion to set aside the MSA was the functional equivalent of a motion to revise the final divorce order. That renders her later motion to revise the court's denial of her motion to set aside the MSA "effectively was a second motion to revise," which is "not appealable because it is not a final judgment. A second motion to revise filed more than thirty days after the entry of judgment, even though within thirty days after denial of the first motion, cannot be granted." *Pickett v. Noba, Inc.*, 122 Md. App. 566, 573 (1998).

B. The Trial Court Did Not Err In Granting Husband's Motion To Dismiss Wife's Motion To Set Aside The MSA Because The Trial Court Found Correctly That Wife Had Failed To Allege Extrinsic Fraud.

Again, because the MSA that Wife asked the court to set aside was incorporated into the circuit court's July 2020 judgment of absolute divorce, Wife's motion to set aside the MSA served as the functional equivalent of a motion to revise the divorce judgment under Maryland Rule 2-535. Wife filed her motion to revise more than thirty days after the divorce judgment was entered. So under Maryland Rule 2-535(b), the circuit court could "exercise revisory power and control over the judgment" only "in case of fraud, mistake, or irregularity." And in order "[t]o ensure the finality of judgments, the movant must carry his or her significant burden of proof—to establish the existence of fraud, mistake, or irregularity by clear and convincing evidence." *Peay v. Barnett*, 236 Md. App. 306, 321 (2018) (cleaned up).

"Where fraud, mistake, or irregularity are determined to exist, we normally review the circuit court's decision whether to grant a motion to revise a judgment pursuant to Maryland Rule 2-535(b) under an abuse of discretion standard." *Facey v. Facey*, 249 Md. App. 584, 601 (2021). But the preliminary determination of whether "'a factual predicate of fraud, mistake, or irregularity'" exists, *id.* (*quoting Wells v. Wells*, 168 Md. App. 382 (2006)), "is a question of law," and we "review the trial court's decision regarding the existence of fraud, mistake, or irregularity without deference." *Id.*

Moreover, not just *any* fraud will allow a trial court to exercise its revisory power: the moving party must prove "extrinsic fraud and not fraud which is intrinsic to the trial

itself." *Hresko*, 83 Md. App. at 231. Intrinsic fraud is fraud that "'pertains to issues involved in the original action or where acts constituting fraud were, or could have been, litigated therein.'" *Id.* at 232 (*quoting Black's Law Dictionary* (5th ed. 1979)). Extrinsic fraud, on the other hand, is fraud that "actually prevents an adversarial trial." *Id.* As we explained in *Hresko*, "[i]n 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." *Id.* In *Schwartz v. Merchants Mortgage Co.*, the Supreme Court of Maryland provided examples, all of which involved the offending party thwarting the proceeding itself:

> "Where the unsuccessful party has been prevented from 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; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side,—these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing."

272 Md. 305, 309 (1974) (*quoting United States v. Throckmorton*, 98 U.S. 61, 95 (1878)).

Wife argues that the trial court erred when it found that her allegations of duress were not a legal basis to support her claim that Husband had committed extrinsic fraud and, on that basis, dismissed her motion to set aside the MSA. Husband counters that Wife failed

to set forth any basis on which the court could have found that extrinsic fraud occurred. We agree with Husband.

This is not a case of first impression. Indeed, as the trial court noted, we dealt with a practically identical situation in *Hresko*. In that case, an ex-husband filed a motion pursuant to Maryland Rule 2-535(b) asking the court to revise its judgment of absolute divorce and rescind the separation and property agreement that had been incorporated into the judgment. He claimed that his ex-wife had concealed assets from him during negotiations for the agreement, and that this constituted extrinsic fraud because his ex-wife's "fraudulent representations were extrinsic to the subsequent divorce action because they took place over two years before its inception and served to prevent [him] from taking advantage of his right to an adversarial proceeding." 83 Md. App. at 233. Although noting that courts around the country appeared to be split on this issue, we held that "[m]isrepresentations 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." *Id.* at 235. And we affirmed the trial court's decision to deny the ex-husband's motion because he "had every opportunity to examine [the allegedly fraudulent] representations through discovery methods or in court." *Id.* at 236.

The only difference between the allegations of fraud at issue in *Hresko* and those before us here are that in this case, Wife has claimed not only that Husband concealed assets fraudulently but also that she was under duress throughout the entirety of the divorce

proceedings because Husband threatened to withhold marital funds and fight her for custody of their children if she did not file for divorce and agree to the MSA. Nevertheless, Wife claims that her allegation of duress required the court to find that extrinsic fraud existed.

As support for her position, Wife cites *Tandra S. v. Tyrone W.*, 336 Md. 303 (1994), *superseded by statute on other grounds*. In that case, the appellant failed to allege extrinsic fraud when he claimed that he only entered into a paternity agreement several years earlier because the mother of the child perjured herself and claimed that the appellant was the child's father. *Id.* at 319. The only relevance that case has here is that in holding that the appellant "was not prevented from having a full adversarial proceeding in the original paternity action" such that there was no extrinsic fraud, the Court noted that "[i]t was his choice to sign the paternity agreement . . . and *there is nothing in the record which indicates that he signed this document under any coercion or duress*." *Id.* at 320 (emphasis added). This, Wife claims, demonstrates that in Maryland, a party moving to have a judgment revised under Maryland Rule 2-535(b) has met her burden of proving extrinsic fraud when she makes any credible allegation of duress.

Not so. *First*, as Wife admits, the Court's statement related to duress in *Tandra S.* is dicta and not binding. *Second*, although the statement is still valid for whatever persuasive authority it might have, it doesn't reach as far as Wife hopes. The Court's statement implies at most that there might be *some* situations in which allegations of coercion or duress sufficiently establish extrinsic fraud, but it surely does not indicate that

extrinsic fraud is established by *all* such allegations. And in any event, this case doesn't present the sort of circumstances that might justify a deviation from the standard rule. Even if we were to assume for present purposes that Husband committed fraud in the form of concealing assets, the fraud would go to the merits of the dispute, and specifically to the property to which Wife might be entitled. Wife was represented by counsel throughout the entirety of the divorce proceedings and the MSA negotiations, was not precluded at all from testifying against or seeking discovery from Husband, or kept in any way from having "an adversarial trial." If this category of fraud could qualify as extrinsic fraud, so would every divorce case where one party disputed the other's assets. So even if *Tandra S.* could be read to allow for the possibility of extrinsic fraud via duress, this case doesn't get there. And because Wife has not alleged or proven extrinsic fraud, we affirm the trial court's decision to deny her motion to set aside the MSA.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. APPELLANT TO PAY COSTS.