Circuit Court for Dorchester County
Case No. C-09-CV-19-000018

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1551

September Term, 2019

MONROE J. SMITH, JR.,

v.

ARETTA C. PINKETT

Fader,
Nazarian,
Shaw Geter

Opinion by Shaw Geter, J.

Filed: December 28, 2020

This is an appeal from a declaratory judgment issued by the Circuit Court for Dorchester County declaring that appellant, Monroe J. Smith, had no interest in the property located at 904 Pine Street in Cambridge, Maryland, that Delmarva Power ("Delmarva") could terminate the electric power to the property upon the request of appellee, Aretta C. Pinkett, and ordered appellant pay appellee's reasonable attorney's fees. Following the filing of a line by appellee and ordering appellant pay attorney's fees in the amount of $5,602.96. Sometime thereafter, appellant filed a motion to revise the judgment asserting mistakes and irregularities in the proceedings, which was denied by the court. Appellant timely noted this appeal.

Appellant presents the following question for our review, which we have rephrased:[1]

1. Did the court err in denying Smith's Motion to Revise the Judgment?

[1] Appellant's original questions are as follows:

1. Did the court err in accepting the defective and deficient Complaint?

2. Did the court err in accepting the defective Affidavit of Service filed in regard to Smith?

3. Did the court err in accepting and ruling upon the deficient Request for a Default Order against Smith?

4. Did the court err in denying Smith's Motion to Vacate the default order?

5. Did the court err in prohibiting Smith's participation in the hearing on May 23, 2019?

6. Did the court err in denying Smith's Motion to Revise the judgment?

For the reasons discussed below, we affirm.

BACKGROUND

Appellee owns the property located at 904 Pine Street in Cambridge, Maryland. Sometime in October 2017, she decided to demolish a building on the property and discovered that the electric service had been placed in appellant's name, even though he had no interest in the property. She attempted to have Delmarva, the utility service provider, disconnect the service, but Delmarva refused, stating it needed appellant's permission. On January 17, 2019, appellee filed a Complaint for Declaratory Judgment ("Complaint") in the circuit court, seeking to declare "she was the sole owner of the property" and to have Delmarva terminate the electric service. She named appellant as a defendant and Delmarva as a third-party defendant. That same day, the court clerk docketed a deficient filing; appellee immediately filed the necessary corrections.

Thereafter, the Sheriff's office made several attempts to serve appellant with notice of the Complaint. On February 15, 2019, a Sheriff's Return was docketed indicating service to appellant was made at 11:51 p.m. on February 14, 2019. Delmarva filed its response to the Complaint on February 22, 2019. Appellant did not file an answer to the Complaint, and on March 20, 2019, appellee filed a Motion for an Order of Default. The court granted appellee's motion and scheduled a hearing for May 23, 2019. Appellant was sent a notice of the default by the clerk and on April 12, 2019, appellant filed a motion to vacate the default order, and requested to file an answer. Appellee filed her opposition on April 22, 2019, and the court denied appellant's request the same day.

At the May 23rd hearing, appellant appeared, but the court did not allow him to participate. Appellee presented her case, and, at the conclusion of the hearing, the court issued an order granting declaratory judgment, but reserved on the issue of attorney's fees for 60 days. On June 27, 2019, appellee filed a Line requesting $5,602.96 in attorney's fees, to which no opposition was filed. The court issued an order on July 12, 2019, granting appellee's request.

Appellant filed a Motion to Revise the Judgment on August 16, 2019, alleging "mistakes and irregularities in the proceeding," which the court denied. Appellant filed this Notice of Appeal on October 15, 2019.

STANDARD OF REVIEW

Maryland Rule 8-202(a) provides that a party has 30 days after a final judgment is entered to note an appeal. Maryland Rule 8-202(c) extends the appeal time frame when "a revisory motion is filed "within 10 days after entry of judgment." *Estate of Vess*, 234 Md. App. 173, 194 (2017). We have stated:

> The timely filing of a motion under Rule 2-535 does not automatically stay an appeal. If the motion is filed within ten days of judgment, it stays the time for filing the appeal; if it is filed more than ten days after [the] judgment, it does not stay the time for filing the appeal even if it is timely because the motion involves fraud, mistake, irregularity, or failure of an employee of the court or of the clerk's office to perform a duty required by statute or rule.

Pickett v. Noba, Inc., 122 Md. App. 566, 571 (1998). The denial of a motion to revise under Rule 2-535(b) is appealable, but the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion." *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997).

Maryland Rule 2-535 provides that a court has general revisory power over a judgment when a party files a motion within 30 days. *Peay*, 236 Md. App. at 320. After that time frame, "the court may exercise its revisory power and control over the judgment" only in cases of fraud, mistake or irregularity. *Thacker v. Hale*, 146 Md. App. 203, 216–17 (2002) (internal citation omitted). It is required that the proponent show "the existence of fraud, mistake, or irregularity by clear and convincing evidence" and "establish that he or she acted in good faith and with ordinary diligence, and that he has a meritorious cause of action or defense." *Davis v. Attorney Gen.*, 187 Md. App. 110, 123–24 (2009) (internal quotation marks and citation omitted). "The existence of a factual predicate of fraud, mistake, or irregularity, necessary to support vacating a judgment under Rule 2-535(b), is a question of law. If the factual predicate exists, the court's decision on the motion is reviewed for abuse of discretion." *Wells v. Wells*, 168 Md. App. 382, 394 (2006) (internal citation omitted). "'When determining whether an irregularity occurred, a trial court must consider the totality of the circumstances. From an appellate standpoint, we review the decision of the trial court for an abuse of discretion.'" *Thacker v. Hale*, 146 Md. App. 203, 219 (2002) (quoting *Gruss v. Gruss*, 123 Md. App. 311, 320 (1998). An "[a]buse of discretion occurs 'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Powell v. Breslin*, 430 Md. 52, 62 (2013) (alterations in original) (quoting *North v. North*, 102 Md. App. 1, 13–14 (1994).

DISCUSSION

Appellant argues that because there were "mistakes and irregularities in the proceedings," the court erred in granting the motion for default judgment and in denying his motion to revise judgment. He contends there were problems with the court filings and that fraudulent activity caused his name to be on the account. With respect to the attorney's fees, he asserts the Line did "not comply with Rule 2-703 and the amounts on the bill do not match the total reflected in the Line." Conversely, appellee claims appellant did not "demonstrate fraud, mistake, or irregularity in a clear and convincing fashion which would support the revision of judgment." She argues the fraud appellant alleges is not a basis for revision of the court's judgment.

We agree. Because appellant filed a motion to revise the judgment more than 30 days after the judgment was entered, the court's review was restricted to whether there was fraud, mistake or irregularity. Our Court has "narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity, in order to ensure finality of judgments." *Id.* (internal quotation omitted). "The existence of fraud, mistake, or irregularity must be shown by 'clear and convincing evidence.'" *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013).

In order to prevail, "a movant must show extrinsic fraud, not intrinsic fraud . . . [Extrinsic fraud occurs] when it actually prevents an adversarial trial [where] . . . the truth was distorted by the complained of fraud." *Id.* at 290–91 (internal citation and quotation omitted). In determining whether 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." *Bland v. Hammond*, 177 Md. App. 340, 351 (2007). Here, appellant alleges there was possible fraud in the creation of the utility account in his name. However, this allegation is not a basis for revising the court's judgment. Rule 2-535 recognizes extrinsic fraud only; which appellant does not assert.

"Mistake," under the rule, is a "jurisdictional mistake." *Peay*, 236 Md. App. at 322. Mistake is limited to instances "where the Court lacks the power to enter a judgment.'" *Pelletier*, 213 Md. App. at 291 (quoting *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51 (2003)). Improper service of process may be considered a mistake under Rule 2-535(b). *Id.* However, "[a] party's appearance and participation in the proceedings will waive" deficiencies alleged about service. *Caucus Distributors, Inc. v. Maryland Sec. Com'r*, 320 Md. 313, 337 (1990).

Appellant argues there was a "mistake" because he was not properly served. According to him, his address was listed incorrectly on the Sheriff's Return and the return "does not have any indication of where it was served or how it was determined that service was made on Monroe Smith, Jr. as opposed to his son Monroe, Smith III." The writings on the return appear "suspicious" and the document does not comply with its own written instructions. Further, the military service affidavit attached to the return of service was not filed in accordance with federal law.

Our review of the record shows that appellant filed a motion to vacate the default order and personally appeared at the default hearing. His affidavit in support of his motion to revise the judgment, stated, "[t]hat when he was served with papers in this matter, he

was perplexed at how he came to be involved in a situation involving an apparently vacant property with which he had no knowing involvement." As such, his claim of improper service is waived.

Appellant's claim that the court erred in denying his motion to revise because of a deficiency in the military affidavit is also without merit and it is not reviewable as a basis for revising a judgment under Rule 2-353. However, even if it were reviewable, the required military service questions and responses were provided in appellee's request for Order of Default. Section § 3931(b)(1)(a) of 50 U.S.C.A., requires that a plaintiff seeking a default judgment "stat[e] whether or not the defendant is in military service and showing necessary facts to support the affidavit." The statute does not require that the form provided be utilized or that the military questions be addressed separately. The affidavit was, thus, in compliance.

Appellant further contends it was improper for the court to grant the motion for an Order of Default. Again, his argument lacks merit in the context of Rule 2-535, which is specific as to mistakes, irregularity and fraud. On April 12, 2019, appellant filed a Motion to Vacate, but failed to state a reason for his "failure to plead" nor did he provide any "defense" to appellant's claim. He did not supply the court with a "substantial and sufficient basis for an actual controversy as to the merits of the action" nor a reason "to excuse the failure to plead." He nevertheless argues that because the judge did not announce the operative rule in its decision-making process, the order was improper. But, "[i]t is a well-established principle that trial judges are presumed to know the law and [how] to apply it properly. . . . there is a strong presumption that judges properly perform their

duties, and that trial judges are not obliged to spell out in words every thought and step of logic." *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (internal quotations and citations omitted). Furthermore, when a trial judge does not "state each and every consideration or factor in a particular applicable standard [it] does not . . . constitute an abuse of discretion, so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion." *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003).

Appellant also alleges there was an irregularity. An irregularity is considered "the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done." *Davis v. Attorney Gen.*, 187 Md. App. 110, 125 (2009) (internal quotation omitted). Under Rule 2-535(b) an irregularity is "not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a [party] had notice and could have challenged, but a nonconformity of process or procedure." *Id.* (internal quotation omitted). "'Irregularity' has a narrow judicial definition in Rule 2-535(b) jurisprudence. It means 'a failure to follow required process or procedure.'" *Thacker v. Hale*, 146 Md. App. 203, 219 (2002) (internal citation omitted) (quoting *Early v. Early*, 338 Md. 639, 652 (1995)). An irregularity may also be seen as "'the failure of an employee of the court or of the clerk's office to perform a duty required by statute or a Rule.'" *Estime v. King*, 196 Md. App. 296, 307 (2010) (quoting *J.T. Masonry Co. v. Oxford Constr. Services, Inc.*, 74 Md. App. 598, 607 (1988)). "[F]or example, failures to send notice of a default judgment, to send notice of an order dismissing an action,

to mail a notice to the proper address, and to provide for required publication" are considered irregularities." *Thacker*, 146 Md. App. at 219–20.

As to appellant's contention that appellee's line as a submission for the grant of attorney's fees and the court's order granting the fees was improper, we find no merit. The court's judgment was neither a mistake nor an irregularity. Had appellant filed a motion to revise within the 30-day time frame after the judgment had been entered, the court could have exercised its general revisory power. However, appellant elected to file afterwards and as a result, his claims are limited to three specific areas. We hold none of his claims have merit, and the court did not err or abuse its discretion in denying the motion to revise judgment.

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