

Circuit Court for Baltimore City
Case No. 24-C-15-005360

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1773

September Term, 2016

TRACYE STAFFORD

v.

NYESWAH FAMILY FOUNDATION, INC.

Berger,
Beachley,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: February 22, 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. Md. Rule 1-104.

Appellee, the Nyeswah Family Foundation (the “Foundation”), filed a complaint in the Circuit Court for Baltimore City alleging that appellant Tracye Stafford (“Stafford”) made negligent and/or intentional misrepresentations arising out of a contract to secure a performance by Anthony Moses Davis (“Davis”), a musical artist known as “Beenie Man.” Under the contract, Davis was to perform at the Foundation’s May 17, 2015 soccer tournament, but he was ultimately unable to fulfill his contractual duties. The Foundation’s complaint named both Stafford and Davis as defendants.

Stafford failed to answer the complaint, and the circuit court entered an order of default against her.¹ After Stafford did not move to vacate the order of default within thirty days, the circuit court held a hearing to consider the Foundation’s damages and subsequently entered a default judgment against Stafford in the amount of \$20,578.76. Stafford timely noted an appeal, and presents the following questions for our review, which we have rephrased slightly:

1. Whether the venue for this action was improper in Baltimore City when Stafford does not reside in, carry on regular business, work in, or habitually engage in a vocation in Baltimore City.
2. Did the circuit court err as a matter of law or abuse its discretion by granting judgment in favor of the Foundation in the amount of \$20,578.76 when the court made a mathematical error in reaching that amount, and when the court’s findings are not supported by the record evidence on which it relied?
3. Did the circuit court err as a matter of law or abuse its discretion by denying Stafford’s Motion to Vacate Judgment when it failed to consider the arguments raised in Stafford’s motion, including Maryland Rules 2-535 and

¹ Due to lack of service, the complaint was dismissed without prejudice as to Davis.

2-613(g), and when it failed to provide adequate rationale upon which it denied the motion?

4. Did the circuit court err as a matter of law or abuse its discretion by denying Stafford's Motion to Vacate Judgment when the court permitted Stafford, a non-attorney, to represent a Maryland corporation at the hearing on damages, in her individual capacity, without legal counsel, and without informing her that an attorney's entry of appearance was required?

We agree with the parties that the judgment amount should be corrected by two cents from \$20,578.76 to \$20,578.74, but otherwise affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On March 30, 2015, the Foundation entered into a contract with "Tracye Stafford CEO of IKON," who purported to represent the interests of Davis. Notably, the contract provides no indication as to IKON's legal status.² Under the contract, Davis was to perform at the Foundation's soccer tournament scheduled for May 17, 2015. The Foundation agreed to pay a performance fee of \$25,000 (with \$12,500 to be paid in advance) to secure Davis's appearance, as well as airfare and other per diem expenses for Davis's entourage. For her part, Stafford warranted that she had the authority to enter into the agreement on Davis's behalf, and the contract expressly provides that Stafford "accepts liability

² At the damages hearing, the Foundation used Maryland Department of Assessments and Taxation records to establish that an entity known as 1 Love Entertainment, LLC is the owner of IKON. In its complaint, the Foundation alleged that "1 Love Entertainment, LLC is a forfeited Maryland limited liability company with its principal Managing Member being Tracye Stafford."

(continued)

hereunder.” In the event of a breach by Davis, the contract provided that the Foundation’s money would be refunded.

In April 2015, Jeanette Rogers (“Rogers”), who signed the contract on behalf of the Foundation, learned that Davis could not obtain a visa to enter the United States.³ Concerned, Rogers contacted Stafford, but Stafford assured Rogers that Davis would be able to make the event, and that if Davis could not perform, she would refund the Foundation’s money.

Davis was unable to obtain a visa by May 17, 2015, but due to an issue with the performance venue, the Foundation sought to reschedule the event and have Davis perform in September 2015 instead. Stafford agreed, but required the Foundation to pay an additional \$6,500 rescheduling fee.

Because Davis was unable to secure a visa in time to perform at the September 2015 event, the Foundation requested a refund. Rogers met with Stafford, who stated that she would return the Foundation’s money “one way or another.” Stafford returned the \$6,500 rescheduling fee, but did not refund the Foundation’s initial \$12,500 deposit.

On October 22, 2015, the Foundation filed a complaint in the Circuit Court for Baltimore City naming Stafford and Davis as individual defendants. The Foundation’s complaint alleged misrepresentation, intentional misrepresentation, constructive fraud, and respondeat superior. As stated *supra*, after Stafford failed to timely file an answer, the

³ Based on the airline reservations admitted into evidence, Davis would have flown into the country from Kingston, Jamaica.

circuit court entered an order of default against Stafford on July 14, 2016. Stafford did not move to vacate the order of default as prescribed by Maryland Rule 2-613(d).

On September 27, 2016, the circuit court held a hearing on the issue of damages. Stafford appeared at the hearing and testified on her own behalf. Rogers testified on behalf of the Foundation, which introduced evidence that it had paid the \$12,500 advance, and that it had also incurred nonrefundable travel expenses related to Davis and his entourage. On September 30, 2016, the court entered a default judgment against Stafford in the amount of \$12,500.00 for the initial deposit plus \$8,078.74 in travel costs, for a total of \$20,578.76.⁴

On October 21, 2016, Stafford noted an appeal from the judgment. Subsequently, on October 26, 2016, Stafford filed a “Motion to Vacate Judgment” pursuant to Rule 2-535(b). In her motion to vacate, Stafford argued that: she should not have been permitted to represent a corporation—1 Love Entertainment, LLC, trading as IKON—before the circuit court; she should not be held personally liable for the actions of a limited liability company; and that the court should have considered the effect of a separate contract between the Foundation and Davis, which she attached to the Motion to Vacate Judgment. On February 16, 2017, the circuit court denied Stafford’s motion to vacate without a hearing.

⁴ As the parties point out on appeal, the total amount should have been \$20,578.74.

DISCUSSION

Stafford argues on appeal that: (1) venue was improper; (2) the circuit court erred in granting a default judgment because its findings were not supported by the evidence and because it made a mathematical error in calculating the judgment; (3) the circuit court failed to consider her arguments or provide adequate rationale for denying her Motion to Vacate Judgment; and (4) the circuit court erred in denying the Motion to Vacate Judgment because Stafford was improperly permitted to represent a corporation. We disagree with each contention and affirm the judgment of the circuit court.

I. Venue

We summarily dispose of Stafford's assertion that venue in Baltimore City was improper. Stafford failed to raise improper venue *at any time* before the circuit court, including in her motion to vacate. Accordingly, we decline to address this issue on appeal. Md. Rule 8-131(a).

II. Default Judgment

Next, we consider Stafford's argument that the circuit court erred in entering a default judgment, which we bifurcate as follows: (1) Stafford's contention that the circuit court's findings of fact were clearly erroneous, and (2) Stafford's assertion that the court made a mathematical error in calculating the judgment amount.

A. *The Circuit Court's Findings of Fact*

Stafford argues that the evidence did not support a finding of liability against her because she was not a party to the contract. In Stafford's view, because the parties to the

contract were the Foundation and 1 Love Entertainment, LLC, trading as IKON, the court erred in entering a judgment against her individually.

We initially note that the Foundation sued Stafford for negligent and intentional misrepresentations related to the contract. Accordingly, Stafford's contention that she cannot be held liable in contract because she was not a party to the contract is irrelevant in that the Foundation asserted tort, not contract, claims.

In any event, our decision in *Franklin Credit Mgmt. Corp. v. Nefflen*, 208 Md. App. 712 (2012) is dispositive. In that case, Franklin failed to file an answer after being served with Nefflen's complaint. *Id.* at 717. On October 6, 2010, the circuit court entered an order of default against Franklin. *Id.* Franklin did not move to vacate the order of default within thirty days as required by Maryland Rule 2-613(d). On April 7, 2011, the court held a default hearing, at which Nefflen was the only witness to testify. *Id.* Franklin did not appear at the default hearing. *Id.* After receiving evidence from Nefflen on damages, the circuit court entered judgment against Franklin based on Nefflen's claims of defamation as well as Franklin's violations of the Maryland Consumer Debt Collection Act ("MCDCA") and the Maryland Consumer Protection Act ("MCPA"). *Id.* at 720-21. Franklin filed a Motion for New Trial or to Alter or Amend Judgment, arguing, *inter alia*, that there was "no basis to find liability" for the defamation, MCDCA, and MCPA violations. *Id.* at 721-22. The circuit court denied Franklin's motion. *Id.* at 723.

On appeal, Franklin argued that the circuit court erred in granting judgment "for defamation and violations of the MCDCA and the MCPA" because they were not "legally

viable claims.” *Id.* at 725. In short, Franklin asserted that, because the factual allegations in Nefflen’s complaint did not support a theory of liability for defamation and the statutory consumer protection claims, the court erred by granting a default judgment.

In affirming the circuit court, we soundly rejected Franklin’s arguments. After contrasting the Maryland and Federal Rules on default judgments, we determined that there was “no support for Franklin’s contention that a prerequisite to the entry of a default judgment, in the absence of any pleadings from the defaulting party, is that the trial court make a determination as to liability.” *Id.* at 727-28. We therefore held,

In this case, where Franklin did not move to vacate the order of default, Franklin’s argument that the circuit court erred in granting judgment in Mr. Nefflen’s favor because his complaint did not plead legally viable claims is without merit. The circuit court did not err in granting a default judgment against Franklin.

Id. at 729.

Here, Stafford asserts that there is no legally viable contract claim against her because she was not a party to the contract. Setting aside the fact that the Foundation did not allege any contract claims against Stafford, *Franklin Credit* holds that a defendant’s failure to timely move to vacate an order of default forecloses any further challenge to liability. Because “[a] judgment by default constitutes an admission by the defaulting party of its liability for the causes of action set out in the complaint[.]” *Pacific Mortg. & Inv.*

Grp., Ltd. v. Horn, 100 Md. App. 311, 332 (1994), Stafford's contention that the circuit court erred by granting a default judgment against her individually is without merit.⁵

B. Mathematical Error

Regarding Stafford's assertion that the amount awarded by the default judgment was incorrect, the Foundation concedes in its brief that the judgment should be corrected to reflect this minor mathematical error. Therefore, while we affirm the circuit court's judgment, we remand for the limited purpose of directing the circuit court to amend the judgment from \$20,578.76 to \$20,578.74.

III. Denial of Motion to Vacate Judgment

Stafford argues that the circuit court erred in denying her Motion to Vacate Judgment, filed pursuant to Rule 2-535(b), for the following three reasons: (1) the circuit court failed to provide any analysis or rationale in denying her Motion to Vacate Judgment; (2) the court erred by ignoring Stafford's argument regarding her unauthorized legal representation of a corporation; and (3) the court erred by ignoring a document that Stafford had attached to her Motion to Vacate Judgment.

Rule 2-535(b) provides:

(b) **Fraud, mistake, irregularity.** 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.

⁵ We further note that Stafford did not argue at the damages hearing that she was not personally liable. Moreover, Ms. Rogers testified for the Foundation that "Ms. Stafford promised that she would give [the Foundation's] money back one way or another."

We review a circuit court’s denial of a Rule 2-535(b) motion for abuse of discretion, which occurs when “no reasonable person would take the view adopted by the [trial] court,” or where the court acts “without reference to any guiding rules or principles.” *Powell v. Breslin*, 430 Md. 52, 62 (2013) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)).

A. The Circuit Court’s Failure to Provide Analysis or Rationale Related to Its Denial of the Motion to Vacate Judgment

Stafford fails to cite any authority in her brief to support the proposition that a court must set forth its reasons for denying a Rule 2-535(b) motion. We are not obliged to consider arguments unsupported by any authority, because as we have repeatedly stated, “is not our function to seek out the law in support of a party’s appellate contentions.” *Benway v. Md. Port Admin.*, 191 Md. App. 22, 32 (2010). We therefore decline to consider this argument.

B. Stafford’s Representation of a Corporation

Stafford claims that the circuit court erred by failing to determine that she improperly represented a corporation as a non-lawyer.⁶ However, the Foundation sued Stafford personally. Because there was no corporate defendant, Stafford’s argument is illogical and unavailing.

⁶ Maryland Rule 2-131(a) provides that “[e]xcept as otherwise provided by rule or statute: (1) an individual may enter an appearance by an attorney or in proper person and (2) a person other than an individual may enter an appearance only by an attorney.” *See Turkey Point Prop. Owners’ Ass’n, Inc. v. Anderson*, 106 Md. App. 710 (1995) (holding that Rule 2-131(a)(2) requires a corporation to be represented by an attorney in circuit court).

C. The Existence of a Separate Contract

Stafford argues that the proffered existence of a separate contract between Davis and the Foundation should have prompted the circuit court to hold a hearing to determine whether the Foundation committed fraud.

“To establish fraud under Rule 2-535(b), a movant must show extrinsic fraud, not intrinsic fraud.” *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008)). “Intrinsic fraud is 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.’” *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990) (quoting *Black’s Law Dictionary* (5th ed. 1979)). In contrast, “[f]raud is extrinsic when it actually prevents an adversarial trial.” *Id.* In the context of Rule 2-535(b), fraud exists where it “prevent[s] the actual dispute from being submitted to the fact finder at all.” *Id.*

Because Stafford failed to allege extrinsic fraud, we hold that the circuit court did not abuse its discretion in denying her motion to vacate without a hearing. *See Li v. Lee*, 210 Md. App. 73, 116 (2013) (“Nothing in the Maryland Rules requires a hearing when a motion to revise a judgment based on ‘fraud, mistake, or irregularity’ is denied.”).

IV. Stafford’s “Representation” of a Corporation

As noted in Section III.B, *supra*, Stafford’s contention that the circuit court erred by permitting her to represent a corporation as a non-lawyer lacks merit. We reiterate that Stafford never represented a corporation in this case—she merely represented herself.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED
WITH INSTRUCTIONS TO ENTER AN
AMENDED JUDGMENT IN FAVOR OF
NYESWAH FAMILY FOUNDATION, INC.
IN THE AMOUNT OF \$20,578.74. COSTS
TO BE PAID BY APPELLANT.**