Circuit Court for Charles County
Case No. 08-C-11-001765

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1961

September Term, 2019

KEVIN JIGGETTS

v.

MICHELLE JIGGETTS

Reed,
Beachley,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 22, 2021

In his quest to undo a provision in a 2011 separation agreement that required him to pay his former spouse one-third of any net proceeds he received from a personal injury case, in March 2019 appellant Kevin Jiggetts filed a petition to vacate the divorce judgment and set aside the separation agreement. Relevant to this appeal, Mr. Jiggetts first claimed that the divorce order did not constitute a final judgment because the court reserved on the issue of child support. Alternatively, he asserted that, even if the judgment were final, it was subject to revision pursuant to Maryland Rule 2-535(b) because the court's failure to establish child support in the divorce decree constituted an "irregularity" within the meaning of the Rule. The circuit court granted Michelle Jiggetts's motion to dismiss, leading to this appeal. We shall affirm the circuit court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The facts are essentially undisputed. The parties married in 1995, separated in 2010, and were granted an absolute divorce by the Circuit Court for Charles County in 2012. The divorce decree entered on March 6, 2012, incorporated without merger the parties' "Voluntary Separation and Property Settlement Agreement" (the "separation agreement") that purported to resolve all issues arising out of their marriage.

Paragraph 20 of the separation agreement addressed Mr. Jiggetts's personal injury claim against the Islamic Republic of Iran emanating from injuries he received as a result of the Beirut barracks bombings in 1983. Paragraph 20 provides:

> Wife shall receive one-third (1/3) of the net proceeds received by Husband from the case captioned *Carolyn Davis v. Islamic Republic of Iran*, Case Number 07-1302, filed in the United States District Court for the District of Columbia. Husband agrees that he shall execute any documents necessary and present said documents to Fay Kaplan Law, PA, 777 Sixth

> Street, NW, 4th FL, Washington, DC 20001 and/or its successors or assigns, in order to guarantee payment to Wife of her one-third (1/3) interest as set for[th] herein.

On March 30, 2012, Mr. Jiggetts was awarded $32,578,016 in compensatory and punitive damages against the Islamic Republic of Iran. In December 2016, Mr. Jiggetts received $1,590,354.06, which represented the first payment he received on the judgment.

After initially filing a contempt petition in January 2017, Ms. Jiggetts thereafter filed an amended petition for contempt in which she sought to hold Mr. Jiggetts in contempt for failing to pay her one-third of the proceeds he received on the judgment against the Iranian government as well as his share of educational expenses for the parties' daughter as required by Paragraph 14 of the separation agreement. The court ultimately found Mr. Jiggetts in contempt, directing entry of a $25,400 judgment against Mr. Jiggetts for unpaid education expenses and a $500,000 judgment for his failure to pay Ms. Jiggetts one-third of the proceeds he received on the Iran judgment. Because Mr. Jiggetts promptly paid the $125,000 court-ordered purge, the court deemed the award for educational expenses satisfied and entered a judgment against Mr. Jiggetts in the amount of $400,400 for the balance due on the payment related to the Iran judgment.

In September 2018, Ms. Jiggetts sought to enforce the judgment in the Superior Court of Ventura County, California.[1] That led to Mr. Jiggetts filing in the Circuit Court for Charles County a "Petition to Vacate Order Dated March 5,[2] 2012, Set Aside

[1] Mr. Jiggetts was then residing in Simi Valley, California.

[2] The divorce decree was dated March 5, 2012, but not entered until March 6, 2012.

Separation Agreement and for Other Relief." After a hearing, the circuit court issued a written opinion granting Ms. Jiggetts's motion to dismiss.

STANDARD OF REVIEW

We have explained the appropriate standard of review from the grant of a motion to dismiss as follows:

> "The proper standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct. In reviewing the grant of a motion to dismiss, we must determine whether the complaint, on its face, discloses a legally sufficient cause of action." In reviewing the complaint, we must "presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom." "Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven."

Higginbotham v. Pub. Serv. Comm'n of Md., 171 Md. App. 254, 264 (2006) (quoting *Britton v. Meier*, 148 Md. App. 419, 425 (2002)).

I. THE MARCH 6, 2012 DIVORCE JUDGMENT CONSTITUTED A FINAL JUDGMENT

Relying on Maryland Rule 2-602(a), Mr. Jiggetts claims that the 2012 divorce decree was not a final judgment because the court "reserved" on the issue of child support. He notes that the separation agreement provided that "the issues respecting the support and maintenance of the Child will be resolved by way of the Maryland Child Support Guidelines." Mr. Jiggetts therefore contends that, as a non-final judgment, the court had plenary authority pursuant to Rule 2-602(a)(3) to revise the divorce judgment, specifically Paragraph 20 of the incorporated separation agreement.

We reject Mr. Jiggetts's argument and hold that the 2012 divorce decree constituted a final judgment. Our analysis begins with the principles that inform whether a judgment is final. In *Rohrbeck v. Rohrbeck*, the Court of Appeals stated,

> If a ruling of the court is to constitute a final judgment, it must have at least three attributes: (1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2-602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule 2-601.

318 Md. 28, 41 (1989).

We have no difficulty concluding that the court here intended the divorce decree to be "an unqualified, final disposition" of the case, and that the decree adjudicated "all claims against all parties." *Id.* It is somewhat incongruous that the court granted the divorce based upon Mr. Jiggetts's complaint, and that his attorney prepared the judgment he now challenges. In his divorce complaint, Mr. Jiggetts requested the following relief: a) an absolute divorce from Ms. Jiggetts; b) an award of primary custody of the minor child in favor of Ms. Jiggetts in accordance with the separation agreement; and c) incorporation, without merger, of the separation agreement in the court's judgment of divorce. After a hearing on February 22, 2012, the family law magistrate recommended that the parties be granted an absolute divorce and that the separation agreement be incorporated, but not merged, into the divorce judgment. Notably, the magistrate expressly stated in his findings and recommendations that "the issue of child support is not being raised by the parties and therefore the issue of child support should be reserved." The divorce "order"—prepared by Mr. Jiggetts's counsel—mirrored the magistrate's recommendation, stating that "since

the parties are not raising the issue of child support at this time, the issue shall be reserved." The divorce decree further required Mr. Jiggetts to pay the court costs and ordered "that this case be and hereby is closed for statistical purposes only."

In our view, the language of the divorce decree clearly evinces the court's intention to render an "unqualified, final disposition of the matter in controversy." Not only did the court order Mr. Jiggetts to pay the final costs and "close" the case, it did not schedule any further hearings. Indeed, the case lay dormant for years because neither party raised nor pursued the issue of child support. Accordingly, there was no "claim" for child support for the court to resolve. Thus, the court's judgment represented not only an "unqualified, final disposition" of the case, but it also adjudicated "all claims against all parties."[3] *Id.* We therefore hold that the 2012 divorce decree constituted a final judgment.

Our holding is consistent with Maryland precedent as well as common practice in our circuit courts. In *Davis v. Davis*, 335 Md. 699 (1994), the Court was tasked with determining whether a final judgment was entered on February 28, 1990, when the clerk made a docket entry confirming the granting of an "absolute divorce" after the court stated from the bench that the grounds for divorce had been established and it intended to reserve on the issue of marital property. We reprint the trial court's bench comments in *Davis*:

> The Court concludes, based on the testimony, that the plaintiff [Mr. Davis] has established grounds to grant him a divorce absolute on the grounds that the parties have lived separate and apart for the statutory period of more than two years. The Court reserves, however, the authority under the statute to make a marital award, if any, after hearing testimony on the property interest of the parties and that the parties will be entitled at that time to present any

[3] Mr. Jiggetts does not assert any clerk error related to recording the judgment as required by Rule 2-601.

> testimony that they desire to present on the issues or the factors that are to be considered by the Court in reaching a conclusion as to what award, if any, ought to be made. And those factors are listed in the statute, and therefore all parties are entitled to present any evidence they care to on the issues, including the cause of the breakup of the marriage.

Id. at 703 (alteration in original).

The wife in *Davis* claimed that the judgment only became final on June 11, 1990, when the court signed a written "Order for Judgment of Absolute Divorce." *Id.* at 704, 709. In concluding that the judgment of absolute divorce was final upon entry of the February 28, 1990 docket entry made subsequent to the court's bench opinion, the Court of Appeals stated,

> The determination of whether a court has rendered judgment turns on whether the court indicated clearly that it had fully adjudicated the issue submitted and had reached a final decision on the matter at that time. In other words, the trial court's ruling must be "an unqualified, final disposition of the matter in controversy."

Id. at 710-11 (citing *Rohrbeck*, 318 Md. at 41). The Court continued,

> In stating "[t]he Court concludes, based on the testimony, that the plaintiff [Mr. Davis] has established grounds to grant him a divorce absolute," it is clear that the court found no impediment to rendering a judgment of divorce at that time. More importantly, there is nothing in the court's language which would even remotely suggest that any further hearings or further action by the court was either contemplated or necessary for the divorce to be granted: there was no "contemplation that a further order [was to] be issued or that anything more [was to] be done." *Rohrbeck*, 318 Md. at 41-42 (citations omitted).

Id. at 711-12 (alterations in original). The Court additionally noted that "both the court and the parties themselves expressly referred to February 28, 1990 as the date of divorce during later proceedings." *Id.* at 712.

The *Davis* Court's determination that the trial court's bench comments constituted a final judgment compels us to conclude that the 2012 divorce judgment here was likewise final. As in *Davis*, there is nothing in the court's written judgment "which would even remotely suggest that any further hearings or further action by the court was either contemplated or necessary" or that "anything more [was to] be done." *Id.* at 711-12. Moreover, the court granted Ms. Jiggetts's contempt petition, filed in 2017, based upon the 2012 divorce decree. As in *Davis*, the court and the parties at least implicitly recognized the validity of the March 6, 2012 divorce decree as the predicate order for the later contempt proceeding. Indeed, as part of the contempt case, the court enforced Paragraph 20 of the separation agreement, entering a $400,400 judgment against Mr. Jiggetts related to the Iran judgment. Under *Davis*, we conclude that the March 6, 2012 divorce judgment unquestionably constituted a final judgment. As such, the trial court did not have plenary authority to revise its judgment pursuant to Rule 2-602(a)(3).[4]

Finally, we recognize that the granting of the divorce in this case was handled in a manner consistent with the practice of our circuit courts. Because the parties intended to finalize their divorce in an uncontested manner, one party—in this case, Mr. Jiggetts—filed the complaint for divorce, and the case proceeded to a hearing before the family law

[4] Relying on *Johnston v. Johnston*, 297 Md. 48, 66 (1983), the circuit court determined that the doctrine of *res judicata* precluded Mr. Jiggetts from collaterally attacking a separation agreement incorporated, but not merged, in a divorce decree. In his reply brief, Mr. Jiggetts asserts that *res judicata* does not apply because the March 6, 2012 decree was not a final judgment. In light of our holding that the divorce decree here constituted a final judgment, *Johnston* is controlling and "the doctrine of *res judicata* operates so as to preclude a collateral attack on the agreement." *Id.*

magistrate. Mr. Jiggetts, his attorney, and Ms. Jiggetts appeared at the magistrate's hearing for what was essentially an uncontested divorce hearing. The magistrate then prepared the appropriate "Report and Recommendations," which the court encompassed in its March 6, 2012 divorce decree prepared by Mr. Jiggetts's counsel. It is not uncommon for courts, at the request of the parties, to generally "reserve" on child support. We decline Mr. Jiggetts's invitation to hold that judgments which reserve on child support in this manner are non-final judgments.[5]

II. THE TRIAL COURT'S RESERVATION OF CHILD SUPPORT IN THE DIVORCE JUDGMENT DOES NOT CONSTITUTE AN "IRREGULARITY" AS CONTEMPLATED BY RULE 2-535(b).

Mr. Jiggetts alternatively argues that, "[e]ven assuming the Divorce Order was a final judgment under Rule 2-602, the trial court's reservation of child support in the Divorce Order was an irregularity as contemplated by Rule 2-535, subjecting the Divorce Order to revision at any time." Specifically, Mr. Jiggetts contends that, at the time the divorce was granted, the court "was required to follow the procedures set forth [in § 12-202 of the Family Law Article] for establishing or departing from the application of the Maryland Child Support Guidelines, which it failed to do." We reject Mr. Jiggetts's argument and explain.

[5] Our conclusion is bolstered by Judge Kevin F. Arthur's statement in his Finality of Judgments text that "if a party wishes to obtain appellate review of a divorce judgment, he or she must note an appeal within 30 days after the judgment has been entered on the docket—even if other issues remain." Kevin F. Arthur, Finality of Judgments and Other Appellate Trigger Issues 33 (3d ed. 2018).

Maryland 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." The Court of Appeals has stated that "[t]he terms 'fraud, mistake, or irregularity' as used in Rule 2-535(b) . . . are narrowly defined and are to be strictly applied." *Early v. Early*, 338 Md. 639, 652 (1995). The authors of Maryland Rules Commentary note:

> The terms "mistake" and "irregularity" are well defined by case law. Thus, unilateral error on the part of one of the parties is not a "mistake" or "irregularity" as used in the rule. Furthermore, some departure from truth or accuracy of which the party had notice and could have challenged does not fall within the meaning of these terms. Rather, the terms contemplate some jurisdictional irregularity of process or procedure.

Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 751 (5th ed. 2020) (citations omitted).

A survey of the case law confirms that "irregularity" as used in Rule 2-535(b) typically contemplates an irregularity in process or procedure. *See, e.g.*, *Early*, 338 Md. 639 (finding irregularity where clerk failed to mail copy of order to parties); *E. Serv. Ctrs., Inc. v. Cloverland Farms Dairy, Inc.*, 130 Md. App. 1 (2000) (finding irregularity where there was inconsistency between date of judgment on handwritten docket and electronic docket); *Gruss v. Gruss*, 123 Md. App. 311 (1998) (finding irregularity where clerk mailed order of dismissal to party's former address); *Henderson v. Jackson*, 77 Md. App. 393 (1988) (finding irregularity where clerk failed to notify party of order of default); *Dypski v. Bethlehem Steel Corp.*, 74 Md. App. 692 (1988) (finding irregularity where clerk failed to notify parties of order of dismissal).

We acknowledge that these cases represent the mainstream of Rule 2-535(b) case law rather than its outer contours. Nevertheless, we are confident that the alleged irregularity here—the court's failure to establish child support though not requested by the parties—falls well outside the Rule's parameters.

We find *Hagler v. Bennett*, 367 Md. 556 (2002) instructive. There, Arthur Bennett lent $54,000 to a corporation pursuant to a promissory note and a security deed of trust. *Id.* at 558. Both the note and deed of trust were executed on behalf of the corporation by "Alfred M. Hagler, President" and "Joan M. Hagler, Secretary." *Id.* Both "Alfred M. Hagler" and "Joan M. Hagler" personally guaranteed payment of the note. *Id.* The note provided for a guarantee by "Allen Hagler" as well, but he never signed the note. *Id.* We rely on the Court of Appeals's description of the salient facts:

> Unbeknownst to Bennett, there were two "Alfred M. Haglers," a father and a son. Both used the same name, without a "Sr." or "Jr." designation. Joan Hagler was the elder Alfred's wife and the younger Alfred's mother. It appears that, at the relevant times, they all lived at the same address, 4015 Terrytown Court in Upper Marlboro. The corporation was owned and operated by the younger Alfred (Alfred *fils*) and his brother, Allen. Bennett assumed that it was the father (Alfred *pere*) who was involved, as he said that "I don't lend to children." Bennett did not attend settlement, however, and thus was unaware that it was, in fact, Alfred *fils* who signed the note, both for the corporation and individually as guarantor, and the deed of trust. Bennett was informed that Allen would be unavailable to sign the note and decided to proceed without him.

Id.

After the corporation defaulted on the loan, Bennett foreclosed on the deed of trust, resulting in a $12,166 deficiency. *Id.* Bennett sued "Alfred M. Hagler" and Joan M. Hagler, attaching a copy of the note and deed of trust to his complaint. *Id.* at 558-59. The

parties did not dispute that the process server actually served Alfred, the father. *Id.* at 559. Because neither Alfred nor Joan responded to the complaint, Bennett obtained a judgment against "Alfred M. Hagler" and "Joan Hagler." *Id.* Bennett subsequently obtained a writ of execution against property owned by Alfred (the father) and Joan as tenants by the entireties. *Id.* Joan moved to vacate the writ of execution and the judgment lien on the basis that Alfred, her husband and the father of their son Alfred, was not indebted to Bennett because he never signed the promissory note.[6] *Id.* at 559-60. The circuit court denied Joan's request to set aside the judgment, concluding "that there was no showing of fraud, mistake, or irregularity." *Id.*

In affirming the circuit court, the Court of Appeals held:

> The District Court acquired personal jurisdiction over Alfred *pere* when process was served on him. There was no invalidity in either the process or the service of it. His name matched the name on the summons and complaint, and he was served at the address noted. His defense went to the merits—he was not liable because he never signed the note and therefore never assumed the obligation upon which suit was brought. Alfred *pere* had a fair opportunity to raise that defense but neglected to do so, and judgment was entered in accordance with lawful and established procedure. There was no evidence of fraud, mistake, or irregularity, as those terms have been judicially defined.

Id. at 563-64. The Court's decision is significant in that, despite the assumption that Alfred (the father) had a valid defense to Bennett's suit on the note because he was not a signatory to it, the Court determined that the facts did not support revision of the judgment due to fraud, mistake, or irregularity. *Id.* The judgment was "entered in accordance with lawful

[6] Alfred (the father) died prior to the hearing on Joan's motion to vacate. *Id.* at 560.

and established procedure" and, relevant to the instant case, Alfred (the father) "had a fair opportunity to raise that defense but neglected to do so[.]" *Id.* at 563.

A similar result was reached in *Autobahn Motors, Inc. v. Mayor & City Council of Balt.*, 321 Md. 558 (1991). In that case, the City of Baltimore filed a petition for condemnation of real property owned by Autobahn Motors. *Id.* at 560. The jury granted condemnation and assessed damages, with judgment being entered on March 2, 1989. *Id.* The City later discovered that the deed conveying one of the properties contained a description that conformed to its condemnation petition, but was inconsistent with the evidence at trial. *Id.* In July 1989, the City moved to "clarify" the judgment, seeking a corrective deed consistent with the trial evidence. *Id.* The circuit court concluded that the discrepancy in the deed description constituted an irregularity under Rule 2-535(b), and ordered that the deed be amended to reflect a correct description of the property. *Id.*

The Court of Appeals reversed, holding that the City failed to establish an irregularity within the meaning of Rule 2-535(b). *Id.* at 563. After noting that the City prepared the document submitted to the jury which contained the error in measurements, the Court concluded,

> To infer that it was the trial court's responsibility to identify and correct the City's typographical errors is incorrect and unsupported by authority. This case serves as a perfect example of what we described in *Weitz* [*v. MacKenzie*, 273 Md. 628 (1975),] as a party's departure from accuracy, *which the party had knowledge of and could have corrected before the judgment became enrolled*.

Id. (emphasis added).

Hagler and *Autobahn Motors* convince us that Mr. Jiggetts failed to establish an irregularity within the meaning of Rule 2-535(b). We see no error in process or procedure as identified in the bulk of the Rule 2-535(b) appellate cases. Moreover, *Hagler* instructs that there is no "irregularity" where a party has a "fair opportunity" to raise a defense before the trial court but fails to do so, and *Autobahn Motors* dispels any notion of "irregularity" where the complaining party "had knowledge of [the alleged defect] and could have corrected [it] before the judgment became enrolled." *Autobahn Motors*, 321 Md. at 563. The case at bar is analogous in that the divorce judgment encompasses literally everything Mr. Jiggetts requested in his complaint for divorce. Mr. Jiggetts clearly had every opportunity to request the court to establish child support, but he neglected to do so, *see Hagler*, 367 Md. at 563-64; similarly, he "had knowledge of and could have corrected [the alleged deficiency] before the judgment became enrolled[,]" *Autobahn Motors*, 321 Md. at 563, but he took no action to have child support established. It is not lost upon us that Mr. Jiggetts had no pecuniary incentive to have the court issue a child support order against him at the time the divorce judgment was entered in 2012.

"The overarching aim of Md. Rule 2-535(b) . . . is the preservation of the finality of judgments, unless specific conditions are met." *Powell v. Breslin*, 430 Md. 52, 71 (2013). Moreover, "[t]he rationale behind strictly limiting a court's revisory power is that in today's highly litigious society, there must be some point in time when a judgment becomes final." *Thacker v. Hale*, 146 Md. App. 203, 216 (2002) (quoting *Tandra S. v. Tyrone W.*, 336 Md. 303, 314 (1994)). These policy concerns aptly apply here, and the circuit court

therefore did not err in determining that Mr. Jiggetts failed to establish an "irregularity" as contemplated by Rule 2-535(b).

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