Circuit Court for Montgomery County
Case No. 369791

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2673

September Term, 2014

RAJU BABU, *et al*.

v.

JONES V. ISAAC, *et ux*.

Arthur,
Leahy,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: August 28, 2017

This case involves the grant of a default judgment and the defendant's belated attempts to undo that default judgment. Because he claims that he was never served properly, Raju Babu requested that the Circuit Court for Montgomery County exercise its revisory power over that default judgment. The circuit court found that Babu was properly served and declined to revise the default judgment. Finding no abuse of discretion, we affirm.[1]

FACTUAL AND PROCEDURAL BACKGROUND

Jones and Florence Isaac, appellees, invested in AIM-U Medversity (AIM-U), a start-up medical school run by Babu in the island nation of St. Lucia. When the Isaacs did not receive the promised return on their investment, they brought an action for fraud, securities fraud, breach of contract, and unjust enrichment against Babu and AIM-U. The Isaacs filed their complaint in the Circuit Court for Montgomery County on October 19, 2012. Due to delays in serving the defendants, the Isaacs had to request new summonses in January of 2013. The summonses were re-issued and pursuant to their terms, the defendants were to respond within 30 days of service. The Isaacs filed an affidavit of service on March 22, 2013. For unknown reasons, it was completed on District of Columbia forms. The affidavit stated that a constable in St. Lucia had served AIM-U on January 4, 2013, by leaving the summons, complaint, and initial order with someone identified as "Dr.

[1] Five months after oral argument, this court was asked to stay resolution of this case to facilitate a possible resolution. We complied. Some seven months later, we were asked to lift that stay and decide the case. By issuance of this Opinion, we again comply.

Kuman" at the AIM-U offices in St. Lucia. The second affidavit of service was also completed on District of Columbia forms and stated that the same constable personally served Babu in St. Lucia on January 25, 2013. Neither Babu nor AIM-U filed an answer or other responsive pleading.

The Isaacs filed a motion for default judgment in July 2013. The circuit court denied the motion, finding that service of process was insufficient for two reasons: (1) the affidavits of service had been returned on District of Columbia forms rather than Maryland; and (2) the summonses had incorrectly stated that the defendants had 30 days to respond instead of 90 days, as allowed by Maryland Rule 2-321(b)(5) when defendants are served outside of the United States.

After the circuit court denied their motion for default, the Isaacs requested reissuance of the summonses. The summonses were reissued on August 16, 2013, and this time correctly stated that the defendants had 90 days to respond. In December 2013, the Isaacs filed their second set of affidavits of service which stated that both Babu and AIM-U had been served on October 22, 2013, by serving Ms. Paule Turmel-John, Vice-President, at the AIM-U offices in St. Lucia. The Isaacs then filed a second motion for default judgment. Again, neither Babu nor AIM-U answered or filed a responsive pleading.

The circuit court granted an order of default in February 2014. After Babu and AIM-U did not respond to notice of the order of default, the circuit court held a hearing on damages in which it found in favor of the Isaacs, and awarded them a total of $36,224,076 in compensatory and punitive damages. That award was reduced to a judgment on April 7,

2014. No appeal was filed by Babu or AIM-U. After an amended judgment was entered in October 2014 (to correct a typographical error in the original judgment), Babu and AIM-U filed a joint motion to vacate the judgment. Following a hearing, the circuit court denied their motion, and this appeal followed.

ANALYSIS

Babu and AIM-U argue that the circuit court erred by refusing to vacate the judgment against them because they were not served properly, and challenge the compensatory and punitive damages awarded to the Isaacs. Because we determine that the circuit court properly denied the joint motion to vacate, we do not address the remaining allegations of error.

I. JOINT MOTION TO VACATE

Babu and AIM-U argue that the circuit court should have granted their motion to vacate the default judgment because they were not properly served and, therefore, the circuit court did not have jurisdiction over them. According to Babu and AIM-U, there was testimony at the hearing that Ms. Turmel-John was not authorized to accept service, that Babu was not personally served, and that the affidavits of service show that service was not properly effectuated under St. Lucia rules. The Isaacs respond that Babu and AIM-U were properly served under the rules in St. Lucia, and therefore Maryland Rule 2-121 is satisfied. Because we conclude that Babu and AIM-U were served in a manner that satisfies Maryland Rule 2-121, we also conclude that the circuit court did not abuse its discretion in refusing to exercise its revisory powers through the motion to vacate.

We begin our inquiry by examining the circumstances in which a trial court may revise a judgment. Although there are theoretically others, the only use of the court's revisory powers raised by the parties here is the power to correct mistakes. This leads us to an investigation of whether there was a mistake—here, an alleged mistake in finding effective service on Babu and AIM-U. Only if we find that service was insufficient will we return to address the initial question of whether the circuit court erred by refusing to correct the alleged mistake. Thus, this opinion will analyze: (1) the circuit court's revisory power; (2) whether service of process was properly accomplished; and (3) whether the circuit court erred by declining to exercise its revisory powers.

A. Revisory Power of the Courts

Rule 2-535 governs all exercises of the circuit court's revisory power, and grants diminishing power to revise the longer after a judgment that power is exercised. Rule 2-535 states:

> **(a) Generally.** On motion of any party filed *within 30 days* after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.
>
> **(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.

Maryland Rule 2-535(a), (b) (emphasis added). The rule contains two relevant principles: (a) within thirty days after entry of judgment, the court may exercise revisory power and control over a judgment with few restrictions, and (b) after thirty days, the court may exercise revisory power over a judgment *only* in the case of fraud, mistake, or irregularity. Because Babu and AIM-U filed their motion several months after entry of judgment, they are only eligible to seek relief under the second category.

Fraud, mistake, and irregularity are the only three instances in which a court may exercise its revisory power more than 30 days after entry of the judgment. Md. Rule 2-535(b). These are specialized terms. In this context, fraud refers only to extrinsic fraud, not intrinsic fraud. *Pelletier v. Burson*, 213 Md. App. 284, 291 (2013) (explaining that extrinsic fraud is only that which prevents an adversarial trial). Mistake refers only to a jurisdictional mistake. *Pickett v. Noba, Inc.*, 114 Md. App. 552, 558 (1997). And an irregularity is a court's "failure to follow required process or procedure." *Thacker v. Hale*, 146 Md. App. 203, 219 (2001) (internal citation omitted). Here, Babu and AIM-U have alleged that there was a mistake.[2] Thus, we focus on whether there was a jurisdictional mistake.

[2] In their appellate brief Babu and AIM-U recognize that in the circuit court they argued only that there was a jurisdictional mistake and, as a result, did not preserve an argument that the judgement was obtained by fraud. On appeal, however, they claim that there was fraud and request that if this court does not find a mistake, we remand the case to give them a chance to develop their theory. Babu and AIM-U recognize that their request is an attempt to circumvent the preservation requirements of Rule 8-131(a). Because their

The moving party must show jurisdictional mistake by clear and convincing evidence. *Pelletier*, 213 Md. App. at 290. "[T]he typical kind of mistake occurs when judgment has been entered in the absence of valid service of process; hence the court never obtains personal jurisdiction over a party." *Chapman v. Kamara*, 356 Md. 426, 436 (1999) (internal quotation and citation omitted). If there was not valid service of process shown by clear and convincing evidence, then the circuit court never obtained personal jurisdiction over Babu and AIM-U and there has been a mistake that would warrant revising the judgment. We now turn to whether there was such a mistake.

B. Service of Process

Service of process in Maryland and St. Lucia are accomplished by slightly different means, but both systems are intended to ensure that a defendant is given notice of the claim and, thereafter, a fair opportunity to be heard.[3] In Maryland, we generally serve defendants with a copy of the complaint, a summons, and a case information sheet, all of which may

claim of fraud was not preserved, we will not otherwise address it nor will we remand for further proceedings on the issue.

[3] In Maryland, we insist on these rules to comport with the guarantees of due process written into our state and federal constitutions. *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 81 (2001) (citing *Ulman v. Mayor and City Council of Baltimore*, 72 Md. 587, 591-92 (1890)) (stating that the Court of Appeals "has long held that procedural due process requires that litigants must receive notice, and an opportunity to be heard"); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) (holding that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections").

be handed to a defendant personally, sent by certified mail, and in certain situations, by posting or publication. Md. Rules 2-121–124 (describing what must be served on a defendant and how service may be made). We aren't so rigid about these forms and methods of service, however, that we require compliance even in other countries. Md. Rule 2-121(a). Instead, pursuant to Rule 2-121, we are satisfied if a defendant in another country is served in the methods permitted by that country *so long as* that method provides the defendant notice of the claim and an opportunity to be heard. Md. Rule 2-121(a); s*ee also Conwell Law v. Tung*, 221 Md. App. 481, 500 (2015) (stating that "the purpose of service of process is to give the defendant fair notice of the action against him and the resulting fair opportunity to be heard"). In St. Lucia, they use slightly different rules. *See Brief History of the Court*, EASTERN CARIBBEAN SUPREME COURT, (May 2, 2017) www.eccourts.org/brief-history-of-the-court/. Instead of a complaint, summons, and case information sheet, in St. Lucia they use a claim form. Eastern Caribbean Supreme Court Rule ("E. Carib. Rule") 8.6 (describing the claim form). Their rules also permit alternative service by any manner "sufficient to enable the defendant to ascertain the contents of the claim form." E. Carib. Rule 5.13 (describing alternative service). Moreover, although St. Lucia prefers personal service, E. Carib. Rule 5.1(1), they are willing to accept alternative service *so long as* it gives the defendant notice. E. Carib Rule 5.13. Thus, in both Maryland and St. Lucia, the service rules are predicated on ensuring that a defendant receives notice of the claims and an opportunity to be heard.

Here, the Isaacs served Babu and AIM-U in St. Lucia by service on Ms. Turmel-John with a complaint, summons, and a case information sheet. This finding was supported by Ms. Turmel-John's affidavit in which she affirmed that on October 22, 2013, she accepted service at her office at AIM-U and that she was authorized to accept service on behalf of Babu and AIM-U.[4] This method comported with both the Maryland Rule governing foreign service of process (Md. Rule 2-121) and with St. Lucia's alternative service rule (E. Carib. Rule 5.13) because it gave Babu and AIM-U notice of the claims against them and, thereafter, an opportunity to be heard.[5]

[4] Babu and AIM-U argue that there was other testimony to the effect that Ms. Turmel-John was not authorized to accept service and, therefore, the circuit court should not have credited her affidavit. The circuit court weighs the credibility and demeanor of witnesses, and was permitted to give more weight to Ms. Turmel-John's affidavit than to the testimony of other witnesses. *See Loyola Fed. Savings Bank v. Hill*, 114 Md. App. 289, 306 (1997). On appeal, we give substantial deference to the trial court's credibility determinations.

[5] Babu and AIM-U also argue that service through Ms. Turmel-John did not satisfy the St. Lucia rule for alternative service because it requires a hearing before a St. Lucia

judge. Because there was no hearing before a St. Lucia judge, they reason that the alternative service was not valid. We disagree with their reading of the governing rule.

Rule 5.13 of the Eastern Caribbean Rules states:

> (1) Instead of personal service a party may choose an alternative method of service.
>
> (2) Where a party –
>
> (a) chooses an alternative method of service; *and*
>
> (b) *the court is asked to take any step* on the basis that the claim form has been served;
>
> the party who served the claim form must file evidence on affidavit proving that the method of service was sufficient to enable the defendant to ascertain the contents of the claim form.
>
> * * *
>
> (4) The court office must immediately refer any affidavit filed under paragraph (2) to a judge, master or registrar who must –
>
> (a) consider the evidence; and
>
> (b) endorse on the affidavit whether it satisfactorily proves service.

E. Carib. Rule 5.13 (emphasis added). We think the key phrase in Rule 5.13 is "and the court is asked to take any step." Thus, when a party in St. Lucia is served through alternative service, *and a St. Lucia court is asked to take action* based on that service, the St. Lucia court must follow the remaining steps contained in Rule 5.13 to determine whether the alternative service was sufficient. We are not convinced, however, that this process is required in cases where there is no request for action in a court of St. Lucia. We do not see in Rule 5.13 a requirement that a St. Lucia court certify that service was sufficient every time alternative service is utilized.

We conclude that the Isaacs served Babu and AIM-U in a manner that satisfied both St. Lucia and Maryland service of process rules.[6]

C. Returning to the Revisory Power of the Courts

There is a presumption that a return of service is *prima facie* evidence of valid service. *Pickett*, 365 Md. at 84. Rather than rebut that presumption, the evidence here supports the circuit court's conclusion that service was valid. Because Babu and AIM-U failed to prove that service was not properly effectuated, they have also failed to prove by clear and convincing evidence that there was a jurisdictional mistake. In the absence of a jurisdictional mistake, the circuit court could not and did not abuse its discretion by denying the joint motion to revise. *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 400-01 (2006) (citations omitted) (when reviewing a circuit court's decision to deny a motion to revise based on fraud, mistake, or irregularity, "the only issue before the appellate court is whether the circuit court erred as a matter of law or abused its discretion in denying the motion"). Because we conclude that there was no jurisdictional mistake, we must also hold

[6] Babu and AIM-U also argue that the Maryland summonses used by the Isaacs were dormant and, therefore, ineffective for service. A summons is dormant if not served within 60 days of issuance. Md. Rule 2-113. A case is not subject to dismissal, however, until 120 days after the summons has been issued. Md. Rule 2-507(b). Because the issue of dormancy was not preserved by Babu and AIM-U, it is not a question that we are able to address. Md. Rule 8-131. Additionally, because Babu and AIM-U were served in St. Lucia where a summons is not required as part of service, the status of the Maryland summons is irrelevant to our analysis.

that the circuit court did not abuse its discretion in declining to revise the judgment. Therefore, we affirm.

II. Excessive Compensatory and Punitive Damages

Babu and AIM-U also make two arguments regarding the award of what they claim to have been excessive compensatory damages and punitive damages in the default judgment.[7] Babu and AIM-U's motion in the circuit court was a motion to revise under Rule 2-535, filed more than thirty days after judgment was entered. As a result, Babu and AIM-U can only challenge whether the circuit court erred as a matter of law or abused its discretion in denying the motion. *See Canaj*, 391 Md. at 400-01. They cannot challenge the underlying judgment granting damages, and therefore we cannot and will not address those arguments. *Id*.

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

[7] The two additional questions presented are:

> I. The punitive damages award is void and, therefore, subject to reversal at any time because (1) punitive damages were not adequately pleaded in the amended complaint and (2) the punitive damages award was not supported by a compensatory damages award under the specific tort for which punitive damages were claimed.
>
> II. The damages the circuit court awarded the appellees were excessive, particularly in light of the fact that punitive damages awarded were over $15 million more than appellees request in their *ad damnum* clause.