Circuit Court for Prince George's County
Case No. CAD10-10266

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2276

September Term, 2017

YOLANDA HAWKINS

v.

MICHAEL HAWKINS

Fader, C.J.,
Meredith,
Wright,

JJ.

Opinion by Wright, J.

Filed: March 21, 2019

On April 5, 2010, Yolanda D. Hawkins ("Mrs. Hawkins"), appellant, filed a "Complaint for Absolute Divorce" in the Circuit Court for Prince George's County against Michael L. Hawkins ("Mr. Hawkins"), appellee. On April 15, 2011, the circuit court issued an "Opinion, Judgment of Divorce and Order of Court" ("Judgment of Divorce"), and awarded Mrs. Hawkins "a portion" of Mr. Hawkins' Federal Employees Retirement System ("FERS") pension "in accordance with the [*Bangs'*] formula."[1] Nearly six years later, in an effort to determine the percentage of the pension that she was due, Mrs. Hawkins filed a "Motion to Alter or Amend the Order Entered April 15, 2011" ("Motion to Alter the Judgment of Divorce"). The court granted her motion, signed an "Amended Judgment of Absolute Divorce and Amended Order of Court" ("Amended Judgment of Divorce"), and signed a corresponding Qualified Domestic Relations Order ("QDRO").

Mr. Hawkins then filed a "Motion to Alter or Amend 'Amended Judgment of Absolute Divorce' and 'Amended Order of Court and [QDRO]'" ("Motion to Alter the Amended Judgment of Divorce"). He argued that the circuit court lacked jurisdiction to revise its original judgment. After the court denied his motion, Mr. Hawkins sought *in banc* review. The *in banc* panel issued an opinion that: (1) reversed the circuit court's Order denying Mr. Hawkins' Motion to Alter or Amend; (2) vacated the circuit court's

[1] The *Bangs'* formula assists courts in determining the division of pension benefits at the time of divorce. *Dziamko v. Chuhaj*, 193 Md. App. 98, 111-12 (2010). The formula will be explained in further detail in this opinion.

"Amended Judgment of Divorce;" and (3) vacated the circuit court's QDRO. Mrs. Hawkins subsequently noted this appeal.

BACKGROUND

On April 5, 2010, Mrs. Hawkins filed a "Complaint for an Absolute Divorce" against Mr. Hawkins. Following a trial on the merits, the circuit court issued its "Judgment of Divorce" and granted Mrs. Hawkins' petition on the grounds of adultery. The court also determined that a monetary award was appropriate. Relevant to this appeal, the court awarded Mrs. Hawkins "a percentage of the marital portion of [Mr. Hawkins'] FERS pension to be paid if, as, and when it is paid to [Mr. Hawkins] as defined by the [*Bangs'*] formula."[2] Mr. Hawkins' "Motion to Alter or Amend the Judgment" was denied, and an *in banc* panel subsequently affirmed the court's judgment.

In 2014, Mrs. Hawkins applied to the United States Office of Personnel Management ("OPM") for her share of Mr. Hawkins' FERS pension. OPM denied Mrs. Hawkins' application, stating, in pertinent part:

> [The attached] court order does not state the amount of your share of the employee annuity in a manner that we can compute as required by section 838.05 of Title 5 of the Code of Federal Regulations. This court order would require OPM to examine a State statute or court decision (on a different case) to understand, establish, or evaluate the formula for computing your share as prohibited by section 838.05(c) of Title 5 of the Code of Federal Regulations. Specifically[,] this court order refers to [*Bangs'*] formula which cannot be evaluated without consulting State law.

[2] The court also awarded Mrs. Hawkins $28,299.00 in non-pension assets and a portion of Mr. Hawkins' Thrift Savings Plan worth $101,679.00.

For over two years, Mrs. Hawkins took no action in response to OPM's letter. Finally, on February 2, 2017, she filed a "Motion to Amend the Judgment of Divorce" and a proposed QDRO, wherein she sought to modify the original "Judgment of Divorce" in order that OPM could calculate her share of the pension without having to examine State law. On April 10, 2017, the circuit court granted Mrs. Hawkins' motion, signed her proposed QDRO, and entered an "Amended Judgment of Divorce." Notably, in the QDRO the court stated that "[Mrs. Hawkins'] interest in [Mr. Hawkins' FERS Pension Plan] shall be 50% of [Mr. Hawkins'] vested account balance" from the date the parties were married until the time they were divorced.

On April 24, 2017, Mr. Hawkins filed a "Motion to Alter the Amended Judgment of Divorce." Mr. Hawkins averred that the circuit court "lacked jurisdiction to exercise revisory power to amend the enrolled Judgment of Divorce under [Md.] Rule 2-535." Further, he argued that "the QDRO . . . contain[ed] facts which were not set forth in the [circuit court's original] Judgment of Divorce; specifically, [Mrs. Hawkins] was *not* awarded 50% of [Mr. Hawkins'] pension." (Emphasis in original). Mrs. Hawkins filed an opposition motion on May 11, 2017, and Mr. Hawkins filed his reply on May 19, 2017. The circuit court ordered the parties to submit memoranda as to "how [they] are getting to their respective percentages of [Mr. Hawkins'] FERS pension awarded by the trial court and how it factors into the [*Bangs'*] formula." The parties submitted their respective memoranda on May 31, 2017.

On June 22, 2017, the circuit court issued an Order denying Mr. Hawkins' "Motion to Alter the Amended Judgment of Divorce," and, in pertinent part, stated the following:

> [Md. Rule 2-535(b)] states that, "On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in the case of fraud, mistake, or irregularity."
>
> This Court's Amended Judgment included the percentage allocated to [Mrs. Hawkins] based on the lack of specificity in the original judgment. This Court found it was a *clear mistake* not to include the appropriate percentage. The order made no sense without the percentage. Thus, this Court properly exercised its discretion and authority in amending the original judgment as it related to mistake of omission in the original order.

(Emphasis added). The court reaffirmed that Mrs. Hawkins was owed 50% of Mr. Hawkins' FERS pension plan, stating that the "50% allocation . . . is the exact same percentage the Court used to allocate the Defendant's Thrift Savings Plan."

On July 6, 2017, Mr. Hawkins filed a "Notice for *In Banc* Review." In his "*In Banc* Review Memorandum," Mr. Hawkins argued that the circuit court erred in revising its "Judgment of Divorce" based on its finding of a "mistake." Most relevant here, he asserted that "[the circuit court's] interpretation of what constituted a mistake in an enrolled judgment was clearly erroneous as it is well settled that 'mistake' as used in [Md. Rule] 2-535(b) is limited to a jurisdictional error[.]" (Quotations and citations omitted). Mr. Hawkins requested that the *in banc* panel "vacate the ['Amended Judgment of Divorce'] and QDRO[.]" In response, Mrs. Hawkins averred that the panel should not the vacate circuit court's "Amended Judgment of Divorce" because the court

had "continuing jurisdiction" over the QDRO,[3] and because the court properly applied the *Bangs'* formula to correct the mistake in its original judgment.

The parties appeared for a hearing before the *in banc* panel on October 11, 2017, and the panel issued an "Opinion and Order" on December 15, 2017. The panel found that "the trial court erred in denying [Mr. Hawkins' 'Motion to Alter the Amended Judgment of Divorce.']" The *in banc* panel subsequently reversed the circuit court's Order denying Mr. Hawkins' "Motion to Alter the Amended Judgment of Divorce" and vacated both the "Amended Judgment of Divorce" and the QRDO. In reaching its conclusion, the panel determined: (1) that "there was no mistake pursuant to [Md.] Rule 2-535(b);" (2) that "the doctrine of continuing jurisdiction [did] not grant the trial court the authority to alter or amend a final enrolled judgment;" and (3) that "[e]ven if the [c]ourt could have exercised revisory power . . . , [Mrs. Hawkins] did not act with ordinary diligence to warrant relief." In response to the *in banc* panel's ruling, Mrs. Hawkins timely submitted this appeal on January 12, 2018.

STANDARD OF REVIEW AND QUESTIONS PRESENTED

In *Hartford Fire Ins. Co. v. Estate of Sanders*, 232 Md. App. 24 (2017), this Court explained the standard for reviewing a judgment that has been subject to *in banc* review. There, we concluded that our scrutiny is applied to judgment of the circuit court and *not* to the judgment of the *in banc* panel. *Hartford*, 232 Md. App. at 38-40. To reach this

[3] Though Mrs. Hawkins relied heavily upon the doctrine of continuing jurisdiction below, she makes no such argument in this appeal.

conclusion, we reasoned that *in banc* review "functions 'as a separate appellate tribunal'" and that it is "a substitute for an appeal to [the Court of Special Appeals]." *Hartford*, 232 Md. App. at 37 (quotations and citation omitted). In that way, the "*in banc* [panel] is subordinate to [the Court of Special Appeals] just as [the Court of Special Appeals is] subordinate to the Court of Appeals." *Id*. at 38 (quotations and citations omitted); *see also Green v. State*, 96 Md. App. 601, 606 (1993) (citations omitted). ("An *in banc* panel is regarded as an appellate body, separate from the circuit court that rendered the decision under review, because the proceeding before it is a substitution for the direct appeal to this Court.").

After drawing that parallel, the *Hartford* Court explained that the "'scope of review' for both Maryland appellate courts is . . . [virtually] identical." *Id*. at 38 (citing Md. Rule 8-131(b)). No matter which appellate court is hearing an appeal, and regardless of which standard of review applies, "ultimately it is the judgment of the trial court that is under review." *Id*. at 38; *see also Phillips v. State*, 233 Md. App. 184, 204 n.15 (2017) (explaining that if the Court had reached the merits of the case, it "would be reviewing the decision of the trial court, not the decision of the *in banc* panel"). Therefore, this Court determined that in the case of an appeal from an *in banc* panel's decision, it exacts scrutiny on the circuit court's judgment and not on that of the panel.

Applying the *Hartford* analysis to this case, we will focus on the circuit court's Order denying Mr. Hawkins' "Motion to Alter the Amended Judgment of Divorce." We

now turn to the questions that Mrs. Hawkins presents for our review, which we have consolidated and reworded:[4]

1. Did Mrs. Hawkins properly preserve for appellate review the issue of whether an "irregularity," under Md. Rule 5-525(b), in the circuit court's "Judgment of Divorce" gave the court the authority to revise that judgment?

[4] Mrs. Hawkins presented her questions to the Court as follows:

[1] Does a Court Order which award[ ] pension but neglects to state the percentage of the pension one party is to receive, but simply states that "Plaintiff be and hereby is awarded a percentage of the marital portion of the defendant's FERS pension plan to be paid if, and when it is paid to the defendant as defined by the "BANGS" formula" constitute[ ] a mistake or irregularity under Md. Rule 2-535(b)?

[2] Did the *In Banc* panel abused[ ] its discretion in holding that the Circuit Court did not have the authority to exercise its revisory power under Md. Rule 2-535(b) to amend the Judgment of Absolute Divorce dated April 15, 2011?

[3] Did the *In Banc* panel abused[ ] its discretion in holding that even if the trial court could have exercised revisory power under Md. Rule 2-535(b), Plaintiff did not act with ordinary diligence to warrant relief?

[4] Did the [*In Banc*] panel engaged[ ] in factual findings when it ruled that Plaintiff did not act with ordinary diligence to warrant relief under Md. Rule 2-535(b)?

[5] Should the *In Banc* panel have referred this matter back to the trial court for a factual finding as to whether or not Plaintiff acted without ordinary diligence?

[6] Does a Judgment of Absolute Divorce which states "Plaintiff be and hereby is awarded a percentage of the defendant's FERS pension plan to be paid if, and when it is paid to the defendant as defined by the 'BANGS' formula" provide[ ] sufficient information to allow the Plaintiff to receive a portion of the Defendant's FERS pension?

2. Assuming, *arguendo*, that Mrs. Hawkins properly preserved the "irregularity" issue for appellate review, did the circuit court properly determine that it had the authority to revise its "Judgment of Divorce?"

For the reasons provided below, we answer both questions in the negative and reverse the judgment of the circuit court.

Before moving to our analysis, we must finally determine the standard of review to be applied to the circuit court's judgment. This Court has previously explained that "[t]he existence of a factual predicate of fraud, mistake, or irregularity, necessary to support vacating a judgment under [Md.] Rule 2-535(b), is a question of law." *Wells v. Wells*, 168 Md. App. 382, 394 (2006) (citation omitted). "When a pure question of law comes before [this Court] . . . , the standard of review is *de novo*, that is, [the] Court gives [no] deference to the trial court's interpretation of the law." *Hartford*, 232 Md. App. at 39. "If the factual predicate [of fraud, mistake, or irregularity] exists, the court's decision . . . is reviewed for abuse of discretion." *Wells*, 168 Md. App. at 394 (citations omitted).

DISCUSSION

The *Bangs'* formula provides courts with a method "of valuing pension benefits at the time of divorce." *Dziamko v. Chuhaj*, 193 Md. App. 98, 111 (2010). In *Dziamko*, this Court explained the formula as follows:

> In *Bangs* [*v. Bangs*, 59 Md. App. 350 (1984)], [this Court] approved [a] method to calculate the marital portion of a pension earned both during and outside of a marriage. Under [the *Bangs'*] formula, the marital portion . . . is "a fraction of which the number of years and months of the marriage [ ] is the numerator and the total number of years and months of employment credited toward retirement is the denominator[.]" [*Bangs*, 59 Md. App.] at

> 356. The non-member spouse's share of the marital portion of the pension is determined by applying an agreed-upon fixed percentage to it. That fixed percentage then is applied to any future payments received under the pension plan.

Dziamko, 193 Md. App. at 111-12 (citations and footnote omitted). The "fixed percentage" may be determined either "by court decision or agreement" of the parties. *Id*. at 112. This "method of calculating the marital portion of a pension . . . [is] the default method in Maryland." *Id*. at 112 (citing Md. Code (1984, 2012 Repl. Vol.), Family Law Article ("FL") § 8-204).

Here, there is no dispute that in its "Judgment of Divorce," the circuit court failed to include a "fixed percentage" to determine the portion of Mr. Hawkins' pension that Mrs. Hawkins was to receive.[5] The parties do, however, disagree as to the effect of the court's failure to include such a percentage. Mrs. Hawkins contends that the lack of a percentage was an "irregularity" under Md. Rule 2-535(b), and that the circuit court therefore had the authority to revise its judgment when she filed her "Motion to Alter the Judgment of Divorce." In response, Mr. Hawkins argues that Mrs. Hawkins failed to raise an "irregularity" argument below and that, even if she had raised such an argument,

[5] As explained above, the circuit court specifically ordered:

> That [Mrs. Hawkins] be and hereby is awarded a percentage of the marital portion of [Mr. Hawkins'] FERS pension plan to be paid if, as, and when it is paid to [Mr. Hawkins] as defined by the [*Bangs'*] formula[.]

the lack of a percentage in the "Judgment of Divorce" was not an "irregularity" under Md. Rule 2-535(b).

I.

A circuit court's authority to revise a judgment is established by Md. Rule 2-535. Relevant here is Md. Rule 2-535(b), which states: "[o]n 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."[6] In *Thacker v. Hale*, 146 Md. App. 203, 216-17 (2002), this Court explained that "after a judgment becomes enrolled, which occurs 30 days after its entry, a court has no authority to revise that judgment unless it determines, in response to a motion under [Md.] Rule 2-535(b), that the judgment was entered as a result of fraud, mistake, or irregularity." Here, because nearly seven years passed between the issuance of the "Judgment of Divorce" and Mrs. Hawkins' "Motion to Alter the Judgment of Divorce," Md. Rule 2-535(b) provides the only means through which the "Judgment of Divorce" could be revised.

First, we note that in its Order denying Mr. Hawkins' "Motion to Alter the Amended Judgment of Divorce," the circuit court stated that it was "clear mistake" not to include the percentage the pension due to Mrs. Hawkins and that, "[u]nder Md. Rule 2-

[6] Md. Rule 2-535(a) allows a circuit court to amend a judgment "on motion of any party filed within 30 days after entry of judgment[.]" Md. Rule 2-535(c) applies to situations involving the discovery of new evidence, and Md. Rule 2-535(d) applies to the revision of judgments that include "clerical mistakes."

535(b), [it had] the authority and discretion to correct [that] mistake." Mrs. Hawkins relied on the court's explanation in her "Response to [Mr. Hawkins'] *In Banc* Review Memorandum," when she stated that the court committed a "clear mistake" in failing to set the percentage of the marital portion of Mr. Hawkins' pension that she would receive.

In her brief, however, Mrs. Hawkins recognizes that in the context of Md. Rule 2-535(b), "[m]istake . . . 'must necessarily be confined to those instances where there is a *jurisdictional mistake* involved.'" (Citing *Bernstein v. Kapneck*, 46 Md. App. 231, 239 (1981) (emphasis added)); *see also Thacker*, 146 Md. App. at 224 (explaining that an enrolled judgment may be revised on the basis of mistake only when the circuit court lacked the jurisdictional authority to render the judgment). By making this concession, and by failing to provide any argument on the issue in her appeal, Mrs. Hawkins abandoned any argument that the circuit court's failure to include a specific percentage in its "Judgment of Divorce" was a "mistake." Even if she had not done so, it is clear that no such "jurisdictional mistake" occurred here, as the circuit court had the "jurisdictional authority" to render its judgment.

After abandoning her argument on "mistake," Mrs. Hawkins contends that "[t]he facts presented warrant[] a finding of 'irregularity'" under Md. Rule 2-535(b). Mr. Hawkins first responds by asserting that Mrs. Hawkins "failed to preserve" her argument on "irregularity."[7] He points out that "[a]t no time in any pleading or memoranda filed

[7] As discussed below, Mr. Hawkins also responded to the merits of this argument.

with the trial court did [Mrs. Hawkins] ever raise the issue of there being an irregularity in the trial court's [Judgment of Divorce]." He also directs the Court to Md. Rule 8-131(a), which states:

> The issues of jurisdiction of the trial court over the subject matter and, unless waived under [Md.] Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will not decide any other issue unless it *plainly appears by the record* to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

(Emphasis added).

In reply, Mrs. Hawkins argues that she did, in fact, raise the issue of "irregularity." She asserts that in her "Motion to Alter the Judgment of Divorce," she (1) "requested relief pursuant to [Md.] Rule 2-535[;]" (2) "cited [Md.] Rule 2-535 under Points and Authorities[;]" and (3) raised "[i]rregularity as applied to Md. Rule 2-535[.]" Mrs. Hawkins also argues that she raised the issue "during argument before the *in banc* panel."

Upon a review of the record, we conclude that Mrs. Hawkins did not raise an argument on "irregularity" before the circuit court. We do recognize that Mrs. Hawkins filed her "Motion to Alter the Judgment of Divorce" "pursuant to [Md.] Rule 2-535[,]" and that she listed Md. Rule 2-535 in the "Points and Authorities" section of that motion. However, nowhere in her motion did Mrs. Hawkins specifically argue that the circuit court's "Judgment of Divorce" constituted an irregularity under Md. Rule 2-535(b) nor did she point to any facts that would give rise to such a finding. In fact, at no point in

Mrs. Hawkins' motion did she cite to subsection (b) of Md. Rule 2-535 nor did she make mention of the word "irregularity." Making general mention of a rule falls far short of raising and preserving a specific issue for appellate review. *See* Md. Rule 8-131(a) ("[T]he appellate court will not decide any other issue unless it *plainly appears by the record* to have been raised in or decided by the trial court[.]") (Emphasis added).[8]

[8] In *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 417 (2016), the Court of Appeals explained that "[t]o raise an issue, a party need not discuss it at length." (Citing *Brock v. State*, 203 Md. App. 245, 270 (2012) (explaining that the issue of using evidence for impeachment purposes was preserved when appellant made only a "single reference" to impeachment within an argument otherwise entirely devoted to admissibility for substantive use)). In *Lockett*, the Court concluded that an issue was preserved "[w]hen . . . both parties discussed the issue and the court necessarily decided it in reaching its decision[.]" *Lockett*, 446 Md. at 417-18. Here, this *de minimis* standard for preserving an issue has not been satisfied, as Mrs. Hawkins did not make even passing mention of an "irregularity" below, and the circuit court did not address the issue in reaching its decision.

Md. Rule 2-311(c) provides further support for our conclusion. The rule states that "[a] written motion . . . shall state with *particularity* the grounds and the authorities in support of each ground." (Emphasis added). Here, Mrs. Hawkins' "Motion to Alter the Judgment of Divorce" fell far short of stating "with particularity" the grounds supporting her request. Because Mrs. Hawkins' motion lacked the required specificity, the circuit court attempted to make a reasonable judgment as to the grounds supporting the motion. In doing so, the court concluded that "clear mistake" had been made. The circuit court's improper reliance on "mistake," as the justification for granting Mrs. Hawkins' motion, cannot be considered an "error or omission" to an otherwise well-pleaded motion. *See Brice v. State*, 254 Md. 655, 663 (1969) ("It certainly cannot be seriously contended that where a motion has been made and the moving party seeks to have a ruling on that motion and the court, through error or omission, does not give a ruling, that the subject matter of the motion has not been properly preserved on appeal[.]"). That the court made such an effort did not absolve Mrs. Hawkins of her duty to assert the grounds for her motion with particularity.

Finally, the circuit court's effort to determine the basis for Mrs. Hawkins' motion does not alter the fundamental rule that this Court will only examine issues that "plainly

Further, we conclude that whether Mrs. Hawkins raised the issue of "irregularity" before the *in banc* panel has no bearing on this appeal. As explained above, the *in banc* panel "is subordinate to this Court just as we are subordinate to the Court of Appeals." *Hartford*, 232 Md. App. at 38 (quotation omitted). To determine whether an issue has been preserved for its review, the Court of Appeals focuses not on the arguments made before this Court but on the record from the circuit court. *See* Md. Rule 8-131(a) ("[T]he appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by *the trial court*[.]") (Emphasis added). As such, our focus is on the issues raised in the circuit court and not those first raised before the *in banc* panel.

Even if Mrs. Hawkins' arguments before the *in banc* panel were relevant to our analysis, our conclusion would not change. In its "Opinion and Order," the *in banc* panel stated the following:

> This panel notes that [Mrs. Hawkins,] in her response to [Mr. Hawkins'] ["]*In Banc* Review Memo,["] failed to argue that Md. Rule 2-535(b) is applicable; however[,] [Mrs. Hawkins], at the *in banc* hearing[,] did address this argument.

The panel immediately went on to explain that "[i]n the instant case, [Mrs. Hawkins'] argument centered around *mistake*." (Emphasis added). The panel's opinion makes clear

appear[ ] by the record to have been raised in or decided by the trial court." Md. Rule 8-131(a). As such, our conclusion that Mrs. Hawkins did not raise the issue of "irregularity" below remains unchanged.

that Mrs. Hawkins did not argue that an "irregularity" in the court's "Judgment of Divorce" would justify the exercise of revisory power.

Because Mrs. Hawkins did not raise the issue of "irregularity" in the circuit court, we hold that the issue was not properly preserved for appeal. We are therefore "not obligated . . . to provide any discussion or analysis" of the issue here. *See Conyers v. State*, 354 Md. 132, 151 (1999).[9] As there was no "mistake" in the circuit court's

[9] We are aware that appellate courts "have discretion under [Md.] Rule 8-131(a) to address an issue that was not raised in or decided by the trial court[.]" *Chaney v. State*, 397 Md. 460, 469 (2007); *see also Jones v. State*, 379 Md. 704, 713 (2004) (explaining that the presence of "[t]he word 'ordinarily' . . . anticipates that an appellate court will, on appropriate occasion, review unpreserved issues.") *Id*. The decision of whether to review an issue "not raised in or decided by the trial court" is guided by the two primary goals of Md. Rule 8-131(a): "to ensure fairness for all parties and to promote the orderly administration of law." *Jones*, 379 Md. at 713-14. In *Chaney*, 397 Md. at 468, the Court of Appeals explained how this discretion interacts with the general mandate of Md. Rule 8-131(a):

> It is a discretion that appellate courts should rarely exercise, as considerations of both fairness and judicial efficiency ordinarily require that all challenges that a party desires to make to a trial court's ruling, action, or conduct be presented in the first instance to the trial court so that (1) a proper record can be made with respect to the challenge, and (2) the other parties and the trial judge are given an opportunity to consider and respond to the challenge.

In this case, we first recognize that Mrs. Hawkins does not argue that this Court should exercise its discretion to analyze whether the circuit court's "Judgment of Divorce" constitutes an "irregularity" under Md. Rule 2-535(b). Even if she had made such an argument, however, the proper exercise of our discretion would require us to decline appellate review of this issue.

Most importantly, neither Mr. Hawkins nor the circuit court had the opportunity "to consider and respond to" Mrs. Hawkins' argument. Further, the circuit court was not given the chance to develop a record on the issue. Considering the primary goals of Md.

judgment, and because the issue of "irregularity" was not properly preserved, we hold that the circuit court erred in finding that it had authority to revise its judgment and further, in denying Mr. Hawkins' "Motion to Alter the Amended Judgment of Divorce."

II.

Even if we assume, *arguendo*, that Mrs. Hawkins properly raised her argument on "irregularity," we would still conclude that the circuit court erred in denying Mr. Hawkins' "Motion to Alter the Amended Judgment of Divorce." As mentioned above, Md. Rule 2-535(b) permits a circuit court to revise its judgment based on an "irregularity." On this point, Mrs. Hawkins argues that a "typical pension order usually states the percentage that is awarded to the receiving party[,]" and that, since the circuit court's original "Judgment of Divorce" included no such percentage, the court had the authority to correct the "irregularity." In response, Mr. Hawkins asserts that the lack of a specific percentage was a "departure from accuracy" but not an "irregularity" under Md. Rule 2-535(b).

In *Thacker*, 146 Md. App. at 219-20, this Court explained the definition of "irregularity" as it applies to Md. Rule 2-535(b):

> "Irregularity" has a narrow judicial definition in [Md.] Rule 2-535(b) jurisprudence. It means a *failure to follow required process or procedure*.
>
> Under our cases, an irregularity which will permit a court to exercise revisory powers over an enrolled judgment has been consistently defined as *the doing or not doing of that, in the conduct of a suit at law, which,*

Rule 8-131(a), we decline to exercise our discretion to review Mrs. Hawkins' argument on "irregularity."

> *conformable to the practice of the court, ought or ought not to be done*[.] As a consequence, irregularity, in the contemplation of the Rule, *usually means irregularity of process or procedure, and not an error*, which in legal parlance generally connotes a departure from truth or accuracy of which a defendant had notice and could have challenged.
>
> Irregularities warranting the exercise of revisory powers most often involve a judgment that resulted from a failure of process or procedure by the clerk of a court, including, for 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.
>
> Applying this narrow concept of "irregularity," the Court of Appeals *consistently has rejected attempts to exercise revisory power over judgments that have been called into question on their merits*, rather than on the basis of questionable procedural provenance. The Court has refused to characterize challenges to the substance of judgments that were obtained through appropriate procedures as "irregularities."

(Emphasis added) (internal quotations and citations omitted).

This limited definition of "irregularity" is consistent with the purpose of Md. Rule 2-535(b). In *Powell v. Breslin*, 430 Md. 52, 71 (2013), the Court of Appeals explained that "[t]he overarching aim of Md. Rule 2-535(b) . . . is the preservation of the finality of judgments, unless specific conditions are met." Expanding the concept of "irregularity" beyond its current bounds would undermine the reliability of circuit courts' judgments and would create uncertainty in our judicial system. In keeping with the aims of Md. Rule 2-535(b), we require "irregularity" to be established by "clear and convincing" evidence. *Thacker*, 146 Md. App. at 217.

There is no such evidence of an "irregularity" here. Importantly, a review of the circuit court's "Judgment of Divorce" shows that the circuit court closely followed the

established procedure for determining a monetary award.[10] The court identified the parties' marital property, valued each item of marital property, and, considered the factors in FL § 8-205 to determine the most equitable way to fashion a monetary award. Mrs. Hawkins fails to offer any argument as to how the circuit court did not follow the required process and procedure before issuing its "Judgment of Divorce." And even more notably, in recognition of the court's compliance with required procedure, Mrs. Hawkins *concedes* that "prior to deciding whether a monetary award [was] appropriate[,] [the circuit court] engaged in the three-step process as required by law."

Instead of focusing her argument on the process that the circuit court used to arrive at its judgment, Mrs. Hawkins challenges the substance of the "Judgment of Divorce." As we stated in *Thacker*, we have "consistently . . . rejected attempts to exercise revisory

[10] In *Malin v. Mininberg*, 153 Md. App. 358, 428 (2003), this Court explained that "[w]hen a party petitions for a monetary award, the [circuit court] must follow a three-step procedure." (Citing FL §§ 8-203, 8-204, 8-205). The Court described that procedure as follows:

> First, for each disputed item of property, the court must determine whether it is marital or non-marital. FL §§ 8-201(e)(1), 8-203. Second, the court must determine the value of all marital property. FL § 8-204. Third, the court must decide if the division of marital property according to title will be unfair; if so, the court *may* make an award to rectify any inequity . . . . FL § 8-205(a).

Malin, 153 Md. App. at 428 (emphasis in original) (quoting *Innerbichler v. Innerbichler*, 132 Md. App. 207, 228 (2000). Finally, the Court stated that, when determining a monetary award, courts must consider the factors set out in FL § 8-205. *Id*. at 428-29.

power over judgments that have been called into question on their merits, rather than on the basis of questionable procedural provenance." *Id*. at 220.

Therefore, the circuit court's failure to include a percentage in its "Judgment of Divorce" was merely an "error, . . . [or] a departure from truth or accuracy of which [Mrs. Hawkins] had notice and could have challenged." *See Thacker*, 146 Md. App. at 219 (quotations and citations omitted). Under Md. Rule 2-535(a), Mrs. Hawkins could have disputed the "Judgment of Divorce" within 30 days of its entry; Mrs. Hawkins, however, raised no such challenge until nearly seven years after the judgment was enrolled. We will not excuse her delay by expanding the definition of "irregularity" to include this "error" in the substance of the circuit court's judgment.

Prior decisions from this Court and the Court of Appeals support our conclusion. In *Thacker*, for example, the circuit court struck an impermissibly punitive acceleration clause from a divorce judgment nearly 12 years after the judgment became enrolled. *Thacker*, 146 Md. App. at 212. On review, this Court concluded "that the arguably erroneous inclusion of an acceleration clause in an enrolled judgment providing for a monetary award is not an irregularity within the meaning of [Md.] Rule 2-535(b)." *Id*. at 222. Further, "[i]n *Weitz* [*v. MacKenzie*], 273 Md. [628,] 631 [(1975)], the Court [of Appeals] reversed an order setting aside a confessed judgment against a guarantor who established that the note was ambiguous as to which obligations were being guaranteed." *Thacker*, 146 Md. App. at 220. And "[i]n *Autobahn Motors, Inc. v. City of Baltimore*, 321 Md. 558, 563 (1991), the Court reversed an order revising a judgment of

condemnation in order to correct the city's erroneous measurements." *Thacker*, 146 Md. App. at 220.

As this Court stated in *Thacker*, 146 Md. App. at 221, "[t]he common teaching of these cases is that if the judgment under attack was entered in conformity with the practice and procedures commonly used by the court that entered it, there is no irregularity justifying the exercise of revisory powers under [Md.] Rue 2-535(b)." Since the circuit court's "Judgment of Divorce" was "entered in conformity with [the court's commonly used] practice and procedures," we conclude that there was no "irregularity" under Md. Rule 2-535(b). *See id*. We hold that the circuit court erred in finding that it had the authority to revise its "Judgment of Divorce" and in denying Mr. Hawkins' "Motion to Alter the Amended Judgment of Divorce."

CONCLUSION

Based on the above, we hold that Mrs. Hawkins did not properly preserve the issue of "irregularity" for appellate review. We further conclude that even if Mrs. Hawkins had properly preserved the issue, no such "irregularity" occurred here. We hold that the circuit court erred in denying Mr. Hawkins' "Motion to Alter the Amended Judgment of Divorce," and we affirm the judgment entered by the *in banc* panel of the circuit court.[11]

[11] Mrs. Hawkins argues that the *in banc* panel "abused its discretion in holding that the [c]ircuit [c]ourt did not have the authority to exercise its revisory power . . . to amend the [Judgment of Divorce]." As we have explained above, *in banc* review "functions as a separate appellate tribunal," *Hartford*, 232 Md. App. at 36-37 (quotations omitted), and we scrutinize only the judgment of the circuit court. Therefore, we need not address Mrs. Hawkins' argument on this point. We note, however, that appellate review of a question

JUDGMENT OF THE *IN BANC* PANEL OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

of law, such as the existence of the factual predicate for irregularity, occurs under a *de novo* standard. *See Wells*, 168 Md. App. at 394; *see also Hartford*, 232 Md. App. at 39. Under the *de novo* standard of review, the *in banc* panel owed no deference to the circuit court's judgment.

Additionally, both parties present arguments related to whether Mrs. Hawkins exercised "due diligence" in asserting that the circuit court's "Judgment of Divorce" was an "irregularity" under Md. Rule 2-535(b). Because we have held that Mrs. Hawkins did not properly preserve this issue for appeal and that, even if she had, no such "irregularity" occurred here, we need not address whether Mrs. Hawkins exercised due diligence in raising the issue.