

Circuit Court for Allegany County
Case No. C-16-44105

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2412

September Term, 2016

STEVEN E. TARPLEY

v.

ROBERT FRIEND, *et al.*

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 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.

Steven E. Tarpley, appellant, is an inmate at North Branch Correctional Institution (NCBI). In 2010, he was placed in the disciplinary segregation unit for 345 days. As a result, NCBI officials confiscated items from Tarpley because those items were not allowed in the disciplinary segregation unit. At the time, NCBI had a policy that, because of a lack of storage space, it would store such confiscated property for 180 days and thereafter, the inmate could either choose to mail the property to a location outside the prison at his or her expense or to allow the property to be destroyed.

Tarpley filed a timely grievance challenging the confiscation of his property, claiming that NCBI's policy was a "regulation" that should not have been enforceable because it was not adopted pursuant to the Administrative Procedure Act. The case was referred to the Office of Administrative Hearings, and following a hearing, the Administrative Law Judge (ALJ) determined that the policy was an institutional directive, and not a regulation, because it had been adopted to save storage space and not as a disciplinary sanction. Tarpley sought judicial review in the circuit court, which affirmed the ALJ's decision. This Court denied his application for leave to appeal.

In June 2016, Tarpley filed a complaint, in the Circuit Court for Allegany County against NCBI Warden Frank Bishop and Correctional Officer Robert Friend, appellees herein. Although the complaint was filed as a separate civil action, Tarpley claimed that he had "newly discovered evidence" and sought reversal of the ALJ's decision pursuant to Maryland Rules 2-535(b) and 2-535(c). Specifically, Tarpley alleged that, in February 2016, he had discovered a "document titled 'Bi-Annual Inventory' and dated January 2, 2015" that "was printed on a DPSCS Notice of Confiscation Form and reflected every item

confiscated, (stolen) from (him) on June 7, 2010, under the pretext of lacking storage space (the inventory form).” He further claimed, without any further explanation, that the inventory form “exposed FRAUD and PERJURY on the part of the defendants” because it contradicted appellees’ claims that it had confiscated and destroyed his property due to lack of storage space.

Appellees filed a motion to dismiss on November 15, 2016, on the grounds that: (1) Tarpley had already taken advantage of his exclusive judicial remedy for his grievance; (2) Tarpley had not filed suit within the applicable statute of limitations; (3) appellees had immunity; and (4) Tarpley failed to state a claim for which relief could be granted because he failed to demonstrate how the “newly discovered evidence” entitled him to any relief. Tarpley filed a motion for extension of time to file an opposition on November 28, 2016. The circuit court did not rule on that motion and, on December 12, 2016, it granted appellees’ motion to dismiss. Tarpley eventually filed an opposition to the motion to dismiss on December 21, 2016; however, the circuit court determined that it was both untimely and moot because the case had already been dismissed.

Tarpley’s sole claim on appeal is that the circuit court abused its discretion by ruling on the motion to dismiss without first ruling on, and granting, his motion for extension of time to file an opposition.¹ However, even if we assume that the circuit court erred in this

¹ In Tarpley’s reply brief he claims, for the first time, that the “circuit court acted arbitrarily and/or capriciously in labeling [him] a frivolous filer.” Because this issue was not raised in Tarpley’s initial brief, we decline to address it on appeal. *See Bryant v. Bryant*, 220 Md. App. 145, 173 (2014) (“The purpose of a reply brief is to *reply* within the boundaries established by first, the appellant’s brief and then, more narrowly, the appellee’s brief.” (emphasis in original)).

regard, that does not necessarily mandate reversal. Instead, in a civil case, an appellant must show not only that an error was committed in the circuit court, but also that the error was prejudicial. *See Miller v. Mathias.*, 428 Md. 419 446 (2012) (noting that “an error that is not shown to be prejudicial does not warrant reversal”).

In his brief, Tarpley does not address the merits of the motion to dismiss or present any argument demonstrating why the outcome of that motion would have been different had the circuit court granted his motion for extension of time and considered his opposition. And it is not this Court's responsibility to attempt to fashion coherent legal theories to support an appellant's claims on appeal. *See HNS Development, LLC v. People's Counsel for Baltimore County*, 425 Md. 436, 459 (2012). Therefore, Tarpley has not met his burden of establishing the existence of prejudicial error. *See Catler v. Arent Fox, LLP*, 212 Md. App. 685 (2013) (noting that the “burden is on the appellant in all cases to show prejudice as well as error” (citation omitted)).

In any event, based on an examination of the record, including Tarpley's late-filed opposition, we are convinced that there is no conceivable argument that Tarpley could have made that would not have led to the dismissal of his complaint. If we construe Tarpley's pleading as a new civil action, as appellees suggest, it was properly dismissed because Tarpley did not exhaust his administrative remedies and because he did not file the complaint within the applicable statute of limitations.

On the other hand, if we construe Tarpley's pleading as a revisory motion pursuant to Maryland Rule 2-535, as Tarpley suggests, it was properly denied because Tarpley failed to demonstrate a cognizable basis for the circuit court to vacate its prior judgment.

“[F]raud, mistake, and irregularity” are the only three instances in which a court may exercise its revisory power more than 30 days after entry of a civil judgment. *See* Maryland Rule 2-535(b); *cf.* Maryland Rule 2-535(c) (stating that a revisory motion based on newly discovered evidence must be filed within 30 days after the entry of judgment). And it is well-settled that Rule 2-535(b) only allows the circuit court to vacate its judgment based on a showing of extrinsic fraud. *See Pelletier v. Burson*, 213 Md. App. 284, 291 (2013). An enrolled decree cannot be vacated under that rule, “even though obtained by the use of forged documents, perjured testimony, or any other frauds which are ‘intrinsic’ to the trial of the case itself.” *Jones v. Rosenberg*, 178 Md. App. 54, 72-73 (2008) (citation omitted). Here, Tarpley’s sole claim was that the inventory form demonstrated that appellees had presented perjured testimony in the hearing before the ALJ. Consequently, even if his claim were true, that would not establish the existence of extrinsic fraud that would have warranted the circuit court vacating its judgment.

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