Circuit Court for Baltimore County
Case No. 03-C-17-011386

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2482

September Term, 2018

ROBERT HOROWITZ, et al.

v.

CONTINENTAL
CASUALTY COMPANY, et al.

Kehoe,
Nazarian,
Gould,

JJ.

PER CURIAM

Filed: April 6, 2020

*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.

Robert Horowitz and Cathy Horowitz, appellants, filed a petition in the Circuit Court for Baltimore County, seeking judicial review of a decision of the Maryland Insurance Administration. On July 12, 2018, the court entered an order dismissing the petition. Twelve days later, on July 24, 2018, the Horowitzes filed a motion to revise or vacate the judgment, which the court denied. This appeal followed, in which the Horowitzes present one question for our review, which we have divided into two and rephrased slightly:

1. Did the circuit court err in denying their petition for judicial review of the decision of the Maryland Insurance Administration?

2. Did the circuit court err in denying their motion to revise or vacate the judgment?[1]

Because the Horowitzes did not file a timely appeal from the order denying the petition for judicial review, we are without jurisdiction to consider the first question. We conclude that the court did not abuse its discretion in denying the motion to revise or vacate the judgment and shall affirm.

BACKGROUND

In 2014, the Horowitzes filed a complaint with the Maryland Insurance Administration, asserting that Continental Casualty Company ("Continental") violated §§ 27-212 and 27-304 of the Insurance Article in connection with the settlement of a legal malpractice lawsuit that the Horowitzes filed against their attorneys, who were insured by Continental. The

[1] The question presented by the Horowitzes in their brief reads as follows:

> "Whether the circuit court erred or abused its discretion by denying the petition or in denying the motion to revise or vacate the judgment[.]"

Administration conducted an investigation and found no violation of Maryland Insurance Law. Dissatisfied with that determination, the Horowitzes requested a hearing. The hearing was stayed pending the outcome of related litigation that was pending in state and federal courts. On October 25, 2017, the Administration dismissed the complaint based on collateral estoppel, *res judicata*, waiver, and lack of standing.[2]

The Horowitzes then filed a petition for judicial review of the Administration's decision in the circuit court. The Horowitzes filed the memorandum required by Maryland Rule 7-207, presenting three questions for review, including whether the Administration was correct in its determination that they were not "aggrieved" parties and therefore lacked standing.[3] On that issue, the Horowitzes asserted that they were aggrieved by the Administration's decision because they were "specially harmed by a settlement agreement that violates the insurance and collection laws of Maryland" as well as "Continental's pursuit and enforcement of that agreement." Both Continental and the Administration filed a memorandum in response, addressing the issues raised by the Horowitzes. In addition, the Administration asserted that venue in Baltimore County was improper.[4]

[2] To have standing to appeal the Administration's order dismissing their complaint, appellants must be "aggrieved person[s] whose financial interests are directly affected" by an order of the Administration. Md. Code (1997, 2017 Repl. Vol.), Insurance Article, § 2-215(b).

[3] The other questions presented by the Horowitzes related to whether their claim was barred by collateral estoppel, *res judicata*, and waiver.

[4] Section 2- 215(c) of the Insurance Code provides that "an appeal under this subtitle shall be taken: (i) to the Circuit Court for Baltimore City; or (ii) if a party to an appeal is an individual, to the circuit court of the county where the individual resides." As the (continued)

A hearing was scheduled for June 20, 2018 at 9:30 a.m. The Horowitzes did not appear at the appointed time. The court's order reflects the following:

> At 7:38 p.m. on June 19, 2018, the evening before the hearing in this matter, Petitioner, Robert Horowitz, left a message on the court's chambers' voicemail advising that he could not be present at the hearing as his daughter had been hospitalized for two weeks and her doctors required that both Petitioners be present at the hospital at exactly the time that the hearing in the matter was to begin. Mr. Horowitz did not identify the hospital or the doctor in question. The [c]ourt's staff communicated with Mr. Horowitz the following morning at 8:54 a.m. and advised that communication with the court must be in writing. Mr. Horowitz was provided with the chambers fax number and email address for that purpose. He was also informed that documentation would be required to support any request he may make. The case was called at 9:57 a.m. Neither the court's staff nor the office of the clerk had received any written communication from either Petitioner at that time, and the matter proceeded without the presence of Petitioners.[5]

Counsel for Continental moved to dismiss the petition on the basis of the arguments made in the pleadings, "specifically that collateral estoppel and res judicata apply" and that the Horowitzes were "not aggrieved persons under the statute and therefore lack standing."

The court issued an order affirming the Administration's decision and dismissing the petition for judicial review, finding that (1) the Horowitzes lacked standing to seek judicial review of the Administration's decision because they were not "aggrieved" parties and (2) Baltimore County Circuit Court was not a proper venue. The court's order was entered on the docket on July 12, 2018.

Horowitzes reside in Montgomery County, it appears that Baltimore County was not a proper venue for the administrative appeal.

[5] The court's order further noted that, "[o]n June 20, 2018 at 1:20 p.m., after the conclusion of the hearing, chambers staff received a fax from [the Horowitzes] which was unreadable. A second fax was received at 3:52 p.m."

Twelve days later, on July 24, 2018, the Horowitzes filed a "Motion to Revise or Vacate the Judgment." Attached to the motion was a note, written on a prescription form, stating that "Mr. & Mrs. Horowitz was [sic] in [redacted word(s)] for emergency family meeting for their child on 6/20/18 from 9:40 Am to 11:45 Am." The pre-printed name of the medical provider/office was redacted, and the signature was illegible. The Horowitzes asserted that "[w]ith the unredacted note, [the court] presumably knows or can confirm details with the doctor of the emergency meeting at the hospital during the entire morning of the hearing, and that it was impossible for the Horowitzes to be at the meeting and at the same time at the courthouse 90 minutes away[.]" Also attached to the motion was a copy of an email message sent by Mr. Horowitz, at 8:02 p.m. on the eve of the hearing, to counsel for Continental and the Administration, advising them of their intent to request a postponement and the reasons for same. The Horowitzes submitted to the court that, because the court now "ha[d] the facts, it should reverse its determination or vacate and hold a re-hearing."

The motion to revise or vacate the judgment briefly addressed the substantive issues. The Horowitzes asserted that the Insurance Article "establishes Baltimore as a venue available to petitioners for appeal[,]" but they did not cite to a specific provision in support of that claim. As to the standing issue, the Horowitzes asserted, as they did in the memorandum that they filed prior to the hearing, that they were aggrieved because the settlement agreement that resolved the legal malpractice lawsuit that they filed against their attorneys was an "illegal contract."

The Administration filed an opposition to the motion to revise or vacate the judgment, asserting that the court's decision affirming the administrative decision was correct, as was the court's decision to hold the hearing in the absence of the Horowitzes. The court denied the motion to revise or vacate in a written order filed on August 24, 2019. The Horowitzes filed a timely appeal from that order on September 20, 2018.

DISCUSSION

Maryland Rule 2-535(a) provides that, "[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment[.]" A motion to revise a judgment "will not toll the time for filing an appeal unless the motion is filed within ten days of the judgment or order." *Furda v. State*, 193 Md. App. 371, 377 n.1 (2010). Accordingly, "[w]hen a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion." *Furda*, 193 Md. App. at 377 n.1. *Accord Sydnor v. Hathaway*, 228 Md. App. 691, 707-08 (2016).

The Horowitzes filed their motion to revise or vacate the judgment on July 24, 2018, more than ten days after the entry of the order, on July 12, 2018, dismissing the petition for judicial review. Accordingly, our review is limited to the propriety of the denial of the motion to revise or vacate. *Furda*, 193 Md. App. at 377 n.1.

"[A]n appeal from the denial of a motion asking the court to exercise its revisory power is not necessarily the same as an appeal from the judgment itself." *Estate of Vess*, 234 Md. App. 173, 204 (2017) (citations omitted). "The scope of review is 'limited to

whether the trial judge abused his [or her] discretion in declining to reconsider the judgment.'" *Id.* at 205 (citations omitted). As we have observed, "[i]t is hard to imagine a more deferential standard[.]" *Id.*

"An abuse of discretion occurs where 'no reasonable person would take the view adopted by the [trial] court' or the trial court 'acts without any guiding rules or principles.'" *Shih Ping Li. v. Tzu Lee*, 210 Md. App. 73, 96 (2013) (citations omitted), *aff'd*, 437 Md. 47 (2014). "The fact that an error may have been or was committed and not corrected by a trial court on a motion to revise is not necessarily an abuse of discretion." *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 700 (1999). "The real question is whether justice has not been done, and our review of the exercise of a court's discretion will be guided by that concept." *Id.* "[W]e will not reverse the judgment of the [trial court] unless there is grave reason for doing so." *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 724 (2002). *See also Estate of Vess*, 234 Md. App. at 205 ("[T]he denial of a motion to revise a judgment should be reversed only if the decision 'was *so far wrong* – to wit, *so egregiously wrong* – as to constitute a clear abuse of discretion.'" (quoting *Stuples v. Baltimore City Police Dep't*, 119 Md. App. 221, 232 (1998)).

Assuming, without deciding, that the Horowitzes sufficiently demonstrated that their failure to appear at the hearing was excusable, we find no abuse of discretion in the denial of the motion to revise or vacate the judgment dismissing the petition for judicial review on the basis of standing and venue. The record of the proceedings before the Administration had been forwarded to the court, and no additional evidence would have been received at the hearing. *See* Md. Rule 7-208 (providing that "[a]dditional evidence

in support of or against the agency's decision is not allowed unless permitted by law.") The Horowitzes had filed a 17-page memorandum setting forth their legal argument as to why the decision of the Administration should be reversed, including their argument on the issue of standing. The court also had before it memoranda from Continental and from the Administration, which addressed the issue of standing and pointed out that, pursuant to Insurance Article, §2-215(c), Baltimore County was an improper venue for the appeal.[6] Under these circumstances, we conclude that the court did not abuse its discretion in denying the motion to revise or vacate the judgment dismissing the petition for judicial review.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[6] The Horowitzes did not file a reply memorandum as allowed by Rule 7-207(a).