

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0287

September Term, 2014

EDWARD J. MEROS

v.

MARYLAND STATE BOARD OF
PHYSICIANS

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: July 7, 2015

*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.

On July 26, 2011, the Maryland State Board of Physicians (the “Board”), appellee, issued an order reprimanding Edward J. Meros, M.D., appellant, for his failure to obtain the required number of continuing education credits (“CME”) before renewing his license to practice medicine. On August 26, 2011, 31 days later, Dr. Meros filed a Petition for Judicial Review in the Circuit Court for Montgomery County. On January 13, 2012, after a hearing, the court dismissed Dr. Meros’ petition on the ground that it was not timely filed pursuant to Md. Rule 7-203(a)(2).¹ On January 23, 2012, Dr. Meros filed a motion for in banc review. On April 4, 2012, the in banc panel affirmed the prior dismissal.

On February 19, 2014, almost two years later, Dr. Meros filed a motion for revision and reconsideration and a motion to vacate the dismissal of his petition for judicial review. By orders dated March 26, 2014, the court denied both motions. Dr. Meros then filed a motion to alter or amend, which the court denied on April 25, 2014.

On appeal, Dr. Meros, a self-represented litigant, presents several questions for our review.² The only question properly before us, however, is as follows:

¹ Md. Rule 7-203 provides, in pertinent part:

Time for filing action.

(a) **Generally.** Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner.

² Dr. Meros phrases his questions as follows:

1. Did the judgment placed on the Appellant exceed Appellee jurisdiction and constitute violations of Maryland Rule 2-535 in prosecutions by the Appellee through violations of antitrust statutes, (continued...)

Did the circuit court properly exercise its discretion in denying the motions filed by Dr. Meros almost two years after the dismissal of his petition for judicial review in the absence of a showing of fraud, mistake, or irregularity?

For the reasons set forth below, we answer that question in the affirmative, and we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On May 14, 2010, the Board charged Dr. Meros with, *inter alia*, failure to obtain CME credits required by the Medical Practice Act, Md. Code (2009 Repl. Vol.) § 14-316 of the Health Occupations Article (“HO”), and by COMAR regulations 10.32.01.09B(1) and D(1).³ After an evidentiary hearing before the Office of Administrative Hearings, an

(...continued)

Constitutional and statutory protections in determination of authorization of purported CME audit, and the determination of a purported Appellee CME credit hour, ex post facto?

2. Did the quasi-judicial Appellee actions, and arguments under statutory Court purview and in subsequent Court proceedings constitute fraud, mistake, or irregularity, and violations of Maryland Rule 2-535 in the proffer of authority to regulate and determine medical education for all physicians through specification of a number of 50 credit hours to be obtained in prosecutions and reports of the Appellee, thereby subject the judgment to dismissal, revision and reconsideration of relief?
3. Do spurious arguments and posing questions proffering false authority or jurisdictional fraud with no reasonable jurisdiction under both a quick-look analysis and a full rule of reason in proceeding and of prosecutions by the Appellee in quasi-judicial [sic] and judicial proceedings constitute violations of Maryland Rule 2-535 in reconsideration of relief?

³ Pursuant to COMAR 10.32.01.09B(1), “[a] physician applying for renewal or reinstatement shall earn at least 50 hours of Category I CME during the 2-year period immediately preceding the licensee’s submission of the renewal or reinstatement application.”

Administrative Law Judge (“ALJ”) issued a proposed decision concluding that Dr. Meros had violated the Medical Practice Act and recommending a reprimand for the violation. Both parties filed exceptions to the ALJ’s proposed decision, and an oral exceptions hearing was held before the Board. On July 26, 2011, the Board issued its Final Decision and Order, ordering that Dr. Meros be reprimanded and fined \$5,000 and that, “upon any application by Dr. Meros for renewal of his medical license, he must demonstrate that he has subsequently obtained the CME credits adjudicated as missing in this case.” The Final Decision and Order provided the following Notice of Right to Appeal:

If Dr. Meros is dissatisfied with this Final Decision and Order, he has the right to file a petition for judicial review of this decision with the circuit court, under [HO § 14-408(b)], [Md. Code (2009 Repl. Vol.) § 10-222 of the State Government Article (“SG”),] and the Maryland Rules of Procedure at Ch. 7-200 *et seq.* The petition must be filed within thirty days of the date this decision is mailed.

On August 26, 2011, 31 days after the date of the Board’s Final Decision and Order, Dr. Meros filed a petition for judicial review in the circuit court. The Board moved to dismiss the petition as untimely, and after a hearing, the circuit court granted the motion.

Dr. Meros then filed a motion for in banc review. On April 4, 2012, after an in banc hearing, the court affirmed the dismissal of Dr. Meros’ petition for judicial review as untimely.

Nearly two years later, on February 19, 2014, Dr. Meros filed motions, pursuant to Md. Rule 2-535(b), to revise, reconsider, and vacate the order dismissing his petition for

judicial review.⁴ In his motions, Dr. Meros claimed, similar to what he asserts on appeal, that the dismissal “violates Constitutional ‘Due Process’, ‘Equal Protection’ and prohibition of ‘ex post facto civil action.’” He claimed that the State “entered judgment when not entitled to do so” because the Board’s order did not identify any patient involvement or harm, that the course requirements and auditing process violated the Medical Practice Act and the State Constitution, and that the Board’s order defamed him. On March 26, 2014, the court denied the motions.

On April 4, 2014, Dr. Meros filed a Motion to Amend or Alter Judgement [sic] Order to Deny Motion for Revision. On April 25, 2014, noting that there was “no legal basis to grant” the motion, the court denied the motion to alter or amend the order denying his motion to revise or vacate. That same day, Dr. Meros filed this appeal.

DISCUSSION

On appeal, Dr. Meros repeats the arguments that he made in the circuit court regarding his claim that the Board wrongfully concluded that he violated the Medical Practice Act. We construe his brief to also argue that the circuit court abused its discretion in declining to exercise its revisory power over an enrolled judgment on the ground of fraud, mistake, or irregularity.

The Board contends that Dr. Meros had no basis to request that the circuit court revise, reconsider, or vacate the order dismissing his petition for judicial review because

⁴ Dr. Meros also based his motions on Md. Rule 2-533. That rule, however, requires that a motion for new trial be filed within ten days after entry of judgment, and therefore, it is inapplicable.

he did not show fraud, mistake, or irregularity, which is required to revise an enrolled judgment. Because the circuit court did not abuse its discretion in denying those motions, it asserts, Dr. Meros had no basis for requesting that the court amend its orders denying his motions to vacate, reconsider, and revise, and therefore, the court did not abuse its discretion in denying his motion to alter or amend.

I.

Standard of Review

We review a trial court’s denial of a Rule 2-535(b) motion for abuse of discretion. *Powell v. Breslin*, 430 Md. 52, 62 (2013). The denial of a revisory motion under Rule 2-534 also is reviewed for abuse of discretion.⁵ *Harrison-Solomon v. State*, 442 Md. 254, 265 (2015). “A trial court abuses its discretion only when ‘no reasonable person would take the view adopted by the [trial] court,’ or ‘when the court acts “without reference to any guiding rules or principles.”’” *Donati v. State*, 215 Md. App. 686, 709 (quoting *King v. State*, 407 Md. 682, 697 (2009)), *cert. denied*, 438 Md. 143 (2014).

II.

The Court Properly Exercised Its Discretion in Denying Dr. Meros’ Motions

Rule 2-535(b) authorizes a court to exercise revisory power and control over an enrolled judgment in case of fraud, mistake, or irregularity. “Maryland courts have narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity, in order

⁵ Md. Rule 2-534 provides, in part, that on motion of any party filed within ten days after entry of judgment, the court may amend its findings or its statement of reasons for the decision or may enter a new judgment.

to ensure finality of judgments.” *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (quoting *Thacker v. Hale*, 146 Md. App. 203, 217 (2002)). “The burden of proof in establishing fraud, mistake, or irregularity is clear and convincing evidence.” *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008).

With respect to fraud, only extrinsic fraud will justify the reopening of an enrolled judgment; fraud that is intrinsic to the trial itself will not suffice. *Bland v. Hammond*, 177 Md. App. 340, 351 (2007). Fraud is extrinsic when it actually prevents an adversarial trial, but it is intrinsic when it is employed during the course of the hearing or trial which provides the forum for the truth to appear. *Manigan v. Burson*, 160 Md. App. 114 (2004). In determining whether extrinsic fraud exists, “the question is not whether the fraud operated to cause the trier of fact to reach an unjust conclusion, but whether the fraud prevented the actual dispute from being submitted to the fact finder at all.” *Bland*, 177 Md. App. at 351 (quoting *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990)). In other words, extrinsic fraud exists

“[w]here the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practised on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his client's interest to the other side,- these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing.”

Id. (quoting *United States v. Throckmorton*, 98 U.S. 61, 65-66 (1878)). “There are notably few instances in Maryland jurisprudence where a judgment has been vacated on the basis of extrinsic fraud.” *Id.* at 352.

Dr. Meros did not present any evidence that meets this definition of extrinsic fraud. Accordingly, he has failed to show that the judgment should have been vacated on this ground.

Mistake is limited to jurisdictional error, such as where the court lacks the power to enter judgment. *Pelletier*, 213 Md. App. at 291. Dr. Meros alleged no facts to suggest that the circuit court did not have the authority to dismiss his petition for judicial review on the ground that it was not timely filed.

“Irregularity” means “a failure to follow required process or procedure.” *Early v. Early*, 338 Md. 639, 652 (1995). “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.” *Thacker*, 146 Md. App. at 219-20.

Dr. Meros alleged no facts indicating an “irregularity” as that term is used in Rule 2-535(b). Indeed, as the Board points out, the only such failure was Dr. Meros’ own failure to timely file his petition for judicial review.

Accordingly, Dr. Meros had no basis for requesting that the circuit court revise, reconsider, or vacate the order dismissing his petition for judicial review pursuant to Rule 2-535(b), and the court did not abuse its discretion in denying his motions. As such, there

was no basis for the court to alter or amend its proper judgment, and therefore, the court did not abuse its discretion in denying his motion to alter or amend.

**JUDGMENT AFFIRMED. COSTS
TO BE PAID BY APPELLANT.**