

Circuit Court for Prince George's County
Case No. CAD18-43501

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0438

September Term, 2021

AARON TURNER

v.

KIMBERLY TURNER

Wells, C.J.
Shaw,
Zic,

JJ.

Opinion by Zic, J.

Filed: July 1, 2022

* 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.

This appeal arises from a judgment of absolute divorce between appellant Aaron Turner (“Husband”) and appellee Kimberly Turner (“Wife”).¹ Husband filed a “Motion for Reconsideration” 17 months after the entry of the judgment of absolute divorce. Although Husband imprecisely titled his motion a “Motion for Reconsideration,” it was a “Motion to Revise” filed pursuant to Maryland Rule 2-535(b) for irregularity in the Circuit Court for Prince George’s County. The circuit court denied the Motion to Revise and Husband appealed.

QUESTION PRESENTED

Husband presents one question on appeal,² which we have recast as follows:

Did the circuit court err or abuse its discretion when it denied Husband’s Motion to Revise?

For the reasons outlined below, we answer the question in the negative.

Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

The Divorce Judgment

Wife filed a Complaint for Absolute Divorce on November 26, 2018 in the Circuit Court for Prince George’s County. Husband was served and repeatedly requested continuances for the court status conference. Husband did not file an answer, counter

¹ Wife has since reverted her name to Kimberly Hawkins.

² Husband phrased the issue as a single question: “Did the [c]ircuit [c]ourt abuse its discretion when it denied Appellant’s motion for reconsideration when the [c]ircuit [c]ourt failed to exercise the statutorily required jurisdiction to dispose of marital property?”

complaint, or any pleading requesting relief from the court. Wife requested an order of default. The court subsequently entered an order of default pursuant to Rule 2-613.

Wife filed a joint statement of marital and non-marital property on June 13, 2019, which listed only a house located in Upper Marlboro, Maryland as marital property. The joint statement, however, was not signed by Husband.

On June 27, 2019, Wife and Husband appeared before a magistrate for an uncontested divorce hearing. Both Wife and Husband appeared pro se, but Husband refused to approach the bench during the proceeding. Instead, Husband, and an unidentified man who came with him waving a red flag, addressed the court from the wall outside the well of the courtroom. The two men interrupted the magistrate at least six times during the hearing. The magistrate found that Wife proved, by a preponderance of the evidence, the grounds for an absolute divorce. The magistrate recommended that Wife be granted an absolute divorce from Husband.

After a break in court proceedings, Wife asked the magistrate to “discuss . . . the marital property” because “[Husband] and I have not been able to come to an agreement on what we should do about the marital property.” Wife explained that the marital property was a house that was titled in her name. The magistrate asked “what . . . the issue [was]” because the house was “titled solely to [Wife].” Wife answered that “[Husband] is living there” and she was “trying to understand what [she] c[ould] do.” The magistrate directed Wife to speak to a lawyer because the house was titled to Wife and there was “not a property decision for [the court] to make” regarding the property.

The magistrate made “no additional recommendations.” The circuit court subsequently entered a judgment of absolute divorce on October 11, 2019.

Husband’s Motion to Revise

On March 15, 2021, Husband filed a “Motion for Reconsideration” pursuant to Maryland Rule 2-535(b), requesting the court to “reconsider its June 27, 2019 failure to follow the statutorily required procedure to determine marital property.” Husband argued that the magistrate committed an irregularity by failing to follow the procedures set forth in Family Law §§ 8-203 and 8-204 to value and dispose of the marital property.³ He requested that the court reopen the case to distribute the property. The circuit court denied the motion in a one-line order, which was entered on the docket on April 27, 2021. Appellant noted an appeal on May 27, 2021.

³ This Court has explained the requirements of §§ 8-203 to 8-204 of the Family Law Article:

When a party petitions for a monetary award, the trial court must follow a three-step procedure. First, for each disputed item of property, the court must determine whether it is marital or nonmarital. [Md. Code Ann., Fam. Law] § 8-203. Second, the court must determine the value of all marital property. [Fam. Law] § 8-204. Third the court must determine if the division of marital property according to title will be unfair; if so, the court may make an award to rectify the inequity.

Doser v. Doser, 106 Md. App. 329, 349-50 (1995).

STANDARD OF REVIEW

Initially, we note that while Husband titled his motion as a “Motion for Reconsideration,” it was a post-judgment revisory motion pursuant to Rule 2-535(b).⁴ Because “[t]he first step to wisdom is calling a thing by its right name,” *Roulette v. City of Seattle*, 78 F.3d 1425, 1426 (9th Cir. 1996), we shall instead call his motion a “Motion to Revise.” See *Peay v. Barnett*, 236 Md. App. 306, 321 (2018) (“[A] motion may be treated as a motion to revise under . . . Rule 2-535 even if it is not labeled as such.” (quoting *Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997))).

“The existence of ‘a factual predicate of fraud, mistake, or irregularity necessary to support vacating a judgment under Rule 2-535(b),’ . . . is a question of law.” *Facey v. Facey*, 249 Md. App. 584, 601 (2021) (quoting *Wells v. Wells*, 168 Md. App. 382, 394 (2006)). This Court, however, “review[s] the circuit court’s decision to deny a request to revise its final judgment under the abuse of discretion standard.” *Pelletier v. Burson*, 213 Md. App. 284, 289 (2013) (quoting *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008)). Such an appeal “is not necessarily the same as an appeal from the judgment itself.” *Estate of Vess*, 234 Md. App. 173, 204 (2017) (quoting *Bennett v. State Dep’t of Assessments & Tax’n*, 171 Md. App. 197, 203 (2006)). Rather, a court’s decision to deny

⁴ The court “may exercise revisory power and control over [a] judgment” if a motion is filed “within 30 days after [the] entry of the judgment.” Md. Rule 2-535(a). After that 30-day period, “the court may exercise revisory power and control over the judgment [only] in case of fraud, mistake, or irregularity.” Md. Rule 2-535(b). Husband’s motion was filed more than 30 days after the entry of judgment, and it specified that it was filed pursuant to Rule 2-535(b).

a motion to revise judgment should be reversed if the decision “was so far wrong—to wit, so egregiously wrong—as to constitute a clear abuse of discretion.” *Estate of Vess*, 234 Md. App. at 205 (quoting *Stuples v. Baltimore City Police Dep’t*, 119 Md. App. 221, 232 (1998)) (“It is hard to imagine a more deferential standard than this one.”). An abuse of discretion occurs “‘where no reasonable person would take the view adopted by the . . . court,’ or when the court acts ‘without reference to any guiding rules or principles.’” *Estime v. King*, 196 Md. App. 296, 303 (2010) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)).

DISCUSSION

Husband asserts that the court abused its discretion when it denied his Motion to Revise. He claims that the court’s decision was arbitrary because it denied his motion “without any explanation on the record” and “failed to address any of [Husband’s] valid arguments.” He contends that the court’s “fail[ure] to exercise [its] statutorily required jurisdiction to dispose of marital property” was an “irregularity” under Rule 2-535(b). As set forth in his motion, Husband specifically claims that the court committed an irregularity because it did not follow the procedures to dispose of the marital property as set forth in §§ 8-203 and 8-204 of the Family Law Article. He argues that “any reasonable person would conclude that there exists a basis to reconsider the judgment of divorce due to irregularity because the facts in the motion demonstrate that [the court] did not follow a statutorily required procedure.”

Wife asserts that the “court lacked revisory power under Rule 2-535(b)” because there was no irregularity of process or procedure and thus the court correctly denied Husband’s motion. Moreover, Wife contends that for Family Law §§ 8-203 to 8-205 to apply, Husband was required to request a monetary award and he never made such a request during the divorce proceeding. She argues that “[e]ven if the . . . court could exercise revisory power, it was well within its broad discretion to deny [Husband]’s post-judgment motion.”

Rule 2-535(b) is an exception to the court’s general revisory power under Rule 2-535(a), which 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.” Md. Rule 2-535(a). Rule 2-535(b) provides that “[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*.” (emphasis added). “The existence of fraud, mistake, or irregularity must be shown by ‘clear and convincing evidence.’” *Pelletier*, 213 Md. App. at 290 (quoting *Davis v. Att’y Gen.*, 187 Md. App. 110, 123 (2009)). If the court determines that “fraud, mistake, or irregularity” exists, the moving party must also establish “that he [or she] has acted in good faith and with ordinary diligence, and that he has a meritorious cause of action or defense.” *Davis*, 187 Md. App. at 124. “Maryland courts have narrowly defined and strictly applied the term[] . . . irregularity, in order to ensure finality of judgments.” *Pelletier*, 213 Md. App. at 290 (quoting *Thacker v. Hale*, 146 Md. App. 203, 217 (2002)).

Under Rule 2-535(b), “[a]n irregularity is the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done.” *Pelletier*, 213 Md. App. at 290 (quoting *Davis*, 187 Md. App. at 125). Moreover, “an irregularity . . . is not an error, which in legal parlance, generally connotes a departure from truth or accuracy of which a [party] had notice and could have challenged, but a nonconformity of process or procedure.” *Pelletier*, 213 Md. App. at 290 (alteration in original) (quoting *Davis*, 187 Md. App. at 125). In other words, an “irregularity” is “a failure to follow required process or procedure.” *Thacker*, 146 Md. App. at 219 (quoting *Early v. Early*, 338 Md. 639, 652 (1995)).

Examples of irregularities under Rule 2-535(b) “includ[e] . . . 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. An irregularity also includes “the failure of an employee of the court or of the clerk’s office to perform a duty required by statute or a Rule.” *Estime*, 196 Md. App. at 307 (quoting *J.T. Masonry Co. v. Oxford Constr. Servs., Inc.*, 74 Md. App. 598, 607 (1988)). Conversely, “challenges to the substance of judgments that were obtained through appropriate procedures” are not considered irregularities. *Thacker*, 146 Md. App. at 220 (“[T]he 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.”).

According to Husband, the court committed an irregularity during the divorce proceeding because the court did not exercise its “statutorily required jurisdiction to dispose of marital property” pursuant to Family Law §§ 8-203 and 8-204.⁵ We disagree and conclude that there was no irregularity. Husband’s contention that the court did not correctly identify and distribute the marital property per statutory requirements is not a “failure to follow [the] required process or procedure” as contemplated by Rule 2-535(b). *Thacker*, 146 Md. App. at 219 (quoting *Early*, 338 Md. at 652). Irregularities include errors such as “the failure of an employee of the court or of the clerk’s office” to send notices or other clerical mistakes. *Estime*, 196 Md. App. at 307, 309 (concluding “that the clerk’s failure to send the court’s orders to appellant’s new address constituted an irregularity of process under Rule 2-535(b)”); *see also Davis*, 187 Md. App. at 128-30 (concluding that lack of notice or service to interested persons were irregularities); *Gruss v. Gruss*, 123 Md. App. 311, 320 (1998) (concluding that the clerk’s failure to mail an order of dismissal to the correct address was an irregularity); *Dir. of Fin. of Baltimore City v. Harris*, 90 Md. App. 506, 514 (1992) (concluding that the clerk’s refusal to accept and file a motion to vacate order of default was an irregularity).

Husband does not allege that there were errors in the court’s ordinary processes and procedures, such as notice or service of process. Instead, Husband contests the merits of the divorce judgment; whether the court failed to comply with certain statutory

⁵ Husband does not contend that there was fraud or mistake during the proceedings.

requirements is not an irregularity. *See, e.g., De Arriz v. Klingler-De Arriz*, 179 Md. App. 458, 468-69 (2008) (determining that there was no irregularity under Rule 2-535(b) because the court’s “failure to reduce the monetary award to a judgment was not an irregularity or a clerical mistake” and that the “[j]udgment of [a]bsolute [d]ivorce was entered in conformity with the practice and procedures commonly used by the trial court”); *Thacker*, 146 Md. App. at 222 (concluding “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 Rule 2-535(b)”).

The term “irregularity” is narrowly construed, and we decline to expand its definition to include Husband’s contention. *See Pelletier*, 213 Md. App. at 290. There was no irregularity of process under Rule 2-535(b) and thus the court had no authority to revise the judgment.⁶ *See Thacker*, 146 Md. App. at 216-17 (“[A] court has no authority to revise [a] judgment unless it determines, in response to a motion under Rule 2-535(b), that the judgment was entered as a result of fraud, mistake, or irregularity.”).

⁶ Moreover, even if there had been an irregularity in the divorce judgment, Husband was also required to “show that he has acted with ordinary diligence and in good faith.” *Estime*, 196 Md. App. at 308. We note that Husband filed neither an answer nor a counter complaint. During the divorce proceeding, he did not object to the court’s determination that “there is no decision . . . to make on the property.” Husband did not file a post-judgment motion within 30 days of the entry of judgment pursuant to Rule 2-535(a) to contest the merits of the divorce judgment, but instead waited 17 months to first raise the issue concerning the marital property. “Nonetheless, as a finding of fact, this determination [of whether Husband acted with ordinary diligence and in good faith] is outside the scope of our review.” *Estime*, 196 Md. App. at 308.

Accordingly, the circuit court did not abuse its discretion by denying Husband’s motion to revise.

Husband also argues that the court “summarily denied” his motion and that “[w]ithout explanation or findings on the record it is unclear as to why the motion was actually denied thus the decision is arbitrary and unsupported by any facts, law or reasoning.” “As a reviewing court, however, we may presume that a circuit court judge acted with knowledge of the controlling law.” *Davis*, 187 Md. App. at 130. Indeed, “[t]hat presumption is not rebutted by mere silence” as a judge “is not required to articulate every step in his thought processes.” *Wasylyuszko v. Wasylyuszko*, 250 Md. App. 263, 282-83 (2021) (quoting *Imagnu v. Wodajo*, 85 Md. App. 208, 221 (1990)); *see also Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003) (“Absent an indication from the record that the . . . judge misapplied or misstated the applicable legal principles, the presumption is sufficient for us to find no abuse of discretion.”). While the court denied Husband’s Motion to Revise in a one-line order, we find no merit in Husband’s assertion that the court failed to consider his arguments. The court did not abuse its discretion.

For all the reasons stated, we affirm the circuit court’s denial of the Motion to Revise and conclude that it did not abuse its discretion.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**