Circuit Court for Charles County
Case No. C-08-CV-24-000576

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 497

September Term, 2025

GEORGE C. VANN, II

v.

ALLSTATE INDEMNITY COMPANY

Arthur,
Shaw,
Beachley, Donald E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 25, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

On August 5, 2024, George Vann, II, appellant, filed a complaint for negligence naming Allstate Indemnity Company, appellee, as the defendant. The complaint did not raise any specific claims of negligence against appellee. Rather, it alleged that on August 12, 2021, appellant had been injured in a traffic accident caused by the negligence of appellee's insured. Appellee filed a motion to dismiss, asserting that because there had been no judgment against its insured, Maryland law prohibited a direct action against it. Following a January 31, 2025, hearing the court granted the motion to dismiss.

Appellant then filed a motion to vacate the dismissal order and to file an amended complaint. In that motion, he alleged that his naming of Allstate, rather than its insured, was due to a "misunderstanding, conflicting administrative guidance from the Clerk's Office, and [his] uncertainty regarding the correct party for the civil action" and thus constituted a "mistake" pursuant to Maryland Rule 2-535(b). He further claimed that, because he had filed the complaint within the statutory period, the statute of limitations should be equitably tolled pursuant to Section 5-203 of the Courts and Judicial Proceedings Article, and he should be granted leave to amend his complaint to name the insured as the proper party. The court denied that motion on February 19, 2025.

The same day, appellant filed a motion for clarification, requesting the court to issue a new order setting forth the legal basis for its ruling. The court then entered an amended order on April 10, 2025, indicating that it was denying the motion because naming the wrong party was not the type of mistake "contemplated under Md. Rule 2-535(b)" or the "type of error recognized under [Section 5-203] to warrant an extension of time under the statute of limitations." Appellant now appeals raising three issues: (1) whether the court

erred in holding that his naming of appellee instead of the at-fault driver was not a "mistake" under Rule 2-535(b); (2) whether the court erred in concluding that the statute of limitations was not subject to equitable tolling; and (3) whether the court abused it discretion in denying him leave to amend his complaint. For the reasons that follow, we shall affirm.

Appellant first contends that his "naming of Allstate instead of the proper tortfeasor was a correctable mistake" under Rule 2-535(b). We disagree. Under Rule 2-535(b), a circuit court, "[o]n motion of any party filed at any time," "may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity[,]" as those terms are "'narrowly defined and strictly applied'" in the case law. *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (quoting *Thacker v. Hale*, 146 Md. App. 203, 217 (2002)). The term "fraud," as used in Rule 2-535(b), means "extrinsic fraud," or the type that prevents an adversarial trial (*see, e.g., Pelletier*, 213 Md. App. at 290-91), for example, by bribing the judge or paying opposing counsel to throw the client's case. "A 'mistake' under [Rule 2-535(b)] refers only to a 'jurisdictional mistake[,]'" *Peay v. Barnett*, 236 Md. App. 306, 322 (2018) (quoting *Chapman v. Kamara*, 356 Md. 426, 436 (1999)), such as the kind of mistake that occurs "when a judgment has been entered in the absence of valid service of process[,]" *Tandra S. v. Tyrone W.*, 336 Md. 303, 317 (1994). "Irregularity" typically involves "a failure to provide required notice to a party[.]" *Mercy Med. Ctr., Inc. v. United Healthcare of the Mid-Atlantic, Inc.*, 149 Md. App. 336, 375-76 (2003) (quotation marks and citation omitted).

Here, appellant's failure to name the insured as a defendant does not establish the existence of fraud, mistake, or irregularity as those terms are defined in Rule 2-535(b). Moreover, we note that appellant's claim that he named Allstate as the defendant based on "conflicting administrative guidance from the Clerk's Office" is both conclusory and not supported by affidavit. *See* Maryland Rule 2-311(d) ("A motion . . . that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.").

Appellant alternatively contends that Section 5-203 of the Courts and Judicial Proceedings Article "supports equitable relief for [his] good-faith filing error." But that section only tolls the statute of limitations when "knowledge of a cause of action is kept from a party by the fraud of an adverse party[.]" CJP § 5-203. Here, however, appellant did not sufficiently plead the existence of fraud or allege that he was unaware of the existence of the cause of action. Rather, he simply sued the wrong party. And there is nothing in the record indicating that appellee did anything to prevent appellant from naming the proper party in this case.

Finally, appellant asserts that the court abused its discretion by denying him leave to amend his complaint. However, at the time appellant filed his motion to amend, the statute of limitations had expired with respect to any claims that appellant had against appellee's insured. And, contrary to appellant's contention, an amendment to add the insured as a defendant is not the correction of a misnomer. Thus, it would not relate back to the filing of the original complaint. *See Nam v. Montgomery Cnty.*, 127 Md. App. 172, 188 (1999) (stating that providing "notice to an automobile liability carrier of a claim

against its assured" does not "make unnecessary the filing of a suit against that assured within the period of limitations"). In short, appellant could not escape the statute of limitations by amending his complaint to name the insured as a defendant after the statute of limitations had run. Consequently, the court did not abuse its discretion in denying his motion to amend.[1]

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

[1] In his reply brief, appellant contends for the first time that the court did not exercise its discretion in denying his motion to revise, because it did not specifically discuss his amendment request in its April 10 order. We need not consider this claim as he did not raise it in his initial brief. *See Strauss v. Strauss*, 101 Md. App. 490, 509 n.4 (1994) ("A reply brief cannot be used as a tool to inject new arguments."). But even if we assume that the court failed to consider his amendment request, we would not reverse because, for the reasons already set forth herein, appellant could not amend his complaint to add the insured as a defendant after the statute of limitations had run.