

Circuit Court for Montgomery County  
Case No. 159369FL

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND\*\*

No. 520

September Term, 2022

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JULES K. AYENU

v.

CHANTAL HLONTOR

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Kehoe,\*  
Arthur,  
Adkins, Sally D.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Adkins, Sally D., J.

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Filed: September 7, 2023

\*Kehoe, Christopher B., J., now retired, participated in the hearing of this case while an active member of this Court, and after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and preparation of this opinion.

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal is limited to determining whether the Circuit Court for Montgomery County erred in striking the Appellant’s Notice of Appeal.<sup>1</sup> We conclude that it did not.

### **PROCEDURAL BACKGROUND**

The Appellee—Chantal Hlontor<sup>2</sup>—filed a praecipe to enroll a foreign judgment in the Circuit Court from Montgomery County on February 14, 2019. The praecipe sought to enroll divorce and custody orders from the First Circuit Court of First Class of Lomé in the Togolese Republic in Africa. The custody order was dated March 25, 2018; the divorce order was dated June 22, 2018. Both were written in French and translated into English.<sup>3</sup> The Appellant and Hlontor’s former husband—Jules K. Ayenu—opposed the enrollment of the orders. A hearing was held,<sup>4</sup> during which Ayenu contested the finality and authenticity of the foreign orders. Ultimately, the court entered an order granting Hlontor’s request for enrollment of the foreign orders on May 15, 2019.

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<sup>1</sup> In his brief, the Appellant asked, “Did the trial court err in striking [Appellant’s] notice of appeal from an ordering denying [Appellant’s] Rule 2-535 motion to revise that part of an enrollment order enrolling a divorce decree allegedly issued by a Togolese court?”

<sup>2</sup> Hlontor filed, *pro se*, an informal brief without the required paper copies and was ordered to show cause why her brief should not be stricken for failure to file paper copies. Her brief addresses Ayenu’s underlying allegations that the Togo divorce and custody orders were invalid and not the timeliness of his appeal. We do not address her brief further nor rely on it in reaching our decision.

<sup>3</sup> There seems to be an issue in the record with whether one of the orders was properly translated. Regardless, as we explain, that issue is not before us.

<sup>4</sup> Ayenu argues that it was improper for the circuit court to have only a translator that spoke Ewe—his native language—and not French—the language of the foreign order—present at the hearing. Again, that issue is not before us.

On October 19, 2020, Ayenu moved to modify custody and enforce visitation. After many filings by the parties, the court held a hearing and granted Ayenu’s petition to modify custody and enforce visitation by order dated April 29, 2021. Specifically, the court ordered that Ayenu and Hlontor would have joint legal custody of their two minor children with Hlontor having tie-breaking authority and primary physical custody of the children; modified child support; and addressed Ayenu’s access to the children.

On May 21, 2021, Ayenu moved to vacate the circuit court’s order enrolling the foreign orders—specifically the divorce order dated June 22,<sup>5</sup> 2018—based on Maryland Rule 2-535(b), which allows a court, at any time, to revise a judgment in the case of fraud, mistake, or irregularity. The court denied the motion on September 30, without a hearing. Ayenu filed a motion to clarify the order, which the court granted. On December 1, 2021, the court entered the order granting the motion to clarify and added:

**FOUND**, that Defendant’s Motion to Vacate in Part filed May 21, 2021 is denied as barred by the doctrine of res judicata in that Defendant had full opportunity to contest the validity of the parties’ Togo Divorce Decree and the translation thereof in prior litigation between the same parties, involving the same cause of action at a hearing held in this Court on the Plaintiff’s request for enrollment on April 26, 2019; and it is further

**FOUND**, that the allegations of fraud raised in Defendant’s Motion to Vacate in Part filed May 21, 2021 are insufficient to support a finding of extrinsic fraud as those allegations, if true, would not prevent an adversarial trial and are not alleged to have impacted the jurisdiction of the Togo tribunal.

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<sup>5</sup> Ayenu mistakenly identified the date of the order as June 28, 2018, in his motion to vacate.

(Document Numbers Removed.)

Roughly three and a half months later, on March 22, 2022, Ayenu filed a notice of appeal—through counsel—as follows:

Defendant Jules Ayenu (“husband”) hereby notes an appeal to the Court of Special Appeals<sup>[6]</sup> from a decision entered on or about September 30, 2021, denying without a hearing husband’s motion to vacate in part an order enrolling foreign orders from the country of Togo, as clarified by an order *apparently entered* on or about December 1, 2021, of which the clerk of court failed to give notice to husband, in violation of husband’s right to due process of law, and *the existence of which husband did not learn until March 21, 2022.*

(Emphasis added.) The circuit court issued a show cause order on March 29, ordering Ayenu to show cause as to why the Notice of Appeal should not be stricken because it had not been filed within the time prescribed by Maryland Rules 8-202 and 8-204. Rule 8-202(a) requires that a notice of appeal be filed within 30 days after the entry of the order from which the appeal is taken.

Ayenu responded to the show cause order on April 11, 2022. His response largely focused on the alleged “problematical” aspects of the foreign orders enrolled by the court which had no bearing on the timeliness of his notice of appeal. Regarding timeliness, Ayenu made the following claims:

On or about December 1, 2021, the Court granted that part of the motion to alter or amend asking that the Court clarify its order (“the December 1 order”). However, the printout from

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<sup>6</sup> At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022. *See* Md. Rule 1-101.1(a)

Maryland Judiciary Case Search attached hereto as *Exhibit B*, shows that the notation for the December 1 order differs from all of the over 90 prior docket entries in this case in that it does not list a “USER NAME” for the deputy clerk. The printout also shows that, unlike the completed docket entry for each of 10 prior orders issued in this case, the inchoate notation for the December 1 order does not state that the order has been “entered,” nor does it claim that the order was mailed to the parties, which the docket entries for the other orders pronounce in capital letters: “COPIES MAILED.”

The undersigned counsel never received a paper copy of the December 1 order or an electronic notice that the order had been issued. On Friday, March 18, 2022, the undersigned counsel received an e-mail inquiry from his client regarding the status of this case, as reflected in the e-mail thread attached hereto as *Exhibit C*.

On Monday, March 21, 2022, after visiting Maryland Judiciary Case Search, the undersigned counsel’s office called the clerk of court office to ask whether the clerk’s office had any record of sending a copy of the December 1 order to the undersigned counsel[.] The clerk’s office declined to answer that question but invited the undersigned counsel’s office to view the December 1 order online. The undersigned counsel then downloaded the order, and forwarded it to his client.

(Paragraph numbers and footnote omitted.) Ayenu asserted that the “December 1 order” was “clearly” not entered on December 1, 2021.

After considering Ayenu’s response, the court struck the Notice of Appeal on May 16. Ayenu then filed a second Notice of Appeal from the court’s decision striking his first Notice of Appeal. Despite Ayenu’s attempts to again argue the validity of the foreign orders in his briefs, this second appeal—regarding the court’s striking of Ayenu’s first Notice of Appeal—is the only issue before us.

## DISCUSSION

Before this Court, Ayenu acknowledges that the December 1 Order had to be entered electronically through MDEC. He also “incorporates as though fully set forth herein the arguments made in his show cause response as summarized in the statement of facts[.]” In support of his claim that the December 1 Order was not actually entered on December 1, he asserts the following:

As to electronic service, this Court need look no further than the clarifying order included in the record extract, which is the order that the undersigned counsel procured on March 22, 2022, after calling the clerk of court. Although that order contains a notation in the lower left corner stating that it was entered, what it does not contain is a notice of electronic filing or service such as may be found in the first notice of appeal, the show cause order, father’s show cause response, the order striking the first order of appeal, the motion to reconsider, the opposition to the motion to reconsider, the order denying the motion to reconsider, and the second notice of appeal.

Having reviewed the documents that Ayenu relies on, we see no validity to this argument.

The notation on the December 1 Order reads,

Entered: Clerk, Circuit Court for  
Montgomery County, MD  
December 1, 2021

Except for the change in dates, this is the exact same notation on the show cause order, the order striking the first order of appeal, and the order denying the motion to reconsider. The other documents he mentions are filings by parties, which, unlike court orders, must be served on the adverse party and present differently than the court orders.

Maryland Rule 8-202(a) provides that “[e]xcept as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or

order from which the appeal is taken.” A final judgment becomes effective when it is “set forth on a separate document[.]” Md. Rule 2-601(a)(1), and “[t]he clerk . . . enter[s] a judgment by making an entry of it on the docket of the electronic case management system used by that court[.]” Md. Rule 2-601(b)(2). *See* Md. Rule 2-601(a)(4). “Entry” of the order “occurs on the day when the clerk of the lower court enters a record on the docket of the electronic case management system used by that court.” Md. Rule 8-202(f).

In *Rosales v. State*, our Supreme Court<sup>7</sup> laid to rest the idea that the time requirement in Rule 8-202(a) is jurisdictional. 463 Md. 552, 568 (2019). Instead, it is a “claim-processing rule[.]” *Id.* However, the Court made clear that it was not “concluding that it is inappropriate for a court to dismiss an untimely appeal. Rather . . . the appropriate grounds for dismissal of an untimely appeal is to dismiss for a failure to comply with the Maryland Rules, instead of for lack of jurisdiction.” *Id.* The Court then explained that there are circumstances where an appellate court may consider untimely appeals, such as when the adverse party has waived or forfeited the argument of untimeliness or in certain cases involving postconviction proceedings for ineffective assistance of counsel. *Id.* The Court further acknowledged that it is the “narrow circumstance in which [an appellate court] will consider the merits without the filing of a timely appeal[.]” *Id.* at 570. Notably, *Rosales* did not involve a situation where the lower court had struck a notice of appeal.

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<sup>7</sup> At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See* Md. Rule 1-101.1(a)

Instead, the issue of timeliness came up for the first time by an adverse party after *certiorari* had already been granted. *Id.* at 557.

The striking of a notice of appeal is permissive and not mandatory. Rule 8-203(a) provides that “the lower court *may* strike a notice of appeal . . . that has not been filed within the time prescribed by Rule[] 8-202[.]” (Emphasis added.) Accordingly, our review of the circuit court’s order is for compliance with Rule 8-203, *Cty. Comm’rs of Carroll Cty. v. Carroll Craft Retail, Inc.*, 384 Md. 23, 42 (2004), and for abuse of discretion, *cf. Thornton Mellon, LLC v. Adrienne Dennis Exempt Trust*, 250 Md. App. 302, 321–22 (2021) (where statutory language permitted a court to use discretion to award fees, the court’s decision was reviewed for abuse of discretion).

In *County Commissioners of Carroll County v. Carroll Craft Retail, Inc.*, our Supreme Court determined that a circuit court erroneously struck a notice of appeal. 384 Md. at 42. The Court reasoned that “Rule 8-203 permits a [c]ircuit [c]ourt to strike a notice of appeal to the [Appellate Court], but only for certain enumerated reasons[.]” *Id.* One such enumerated reason is if the notice of appeal was not filed within the time required by Rule 8-202. *Id.*; Md. Rule 8-203(a)(1). In the case of *Carroll Craft Retail*, the circuit court had struck the notice because it determined that the Appellate Court did not have jurisdiction over the appeal. *Carroll Craft Retail*, 384 Md. at 32–33. That was improper, said the Supreme Court, because “[i]f an appeal is subject to dismissal for any reason other than the four articulated in Rule 8-203, it is the appellate court that must order the dismissal.” *Id.* at 42.



The lower court in *Carroll Craft Retail* abused its discretion by making a legal error in failing to abide by the four enumerated reasons for striking a notice of appeal. That is plainly not the case here. The Circuit Court for Montgomery County struck Ayenu’s notice of appeal for one of the permissible reasons under Rule 8-203—his failure to timely file the notice of appeal after the order was entered.

Despite Ayenu’s contentions to the contrary, we are persuaded by our review of the record that the Clerk of the Circuit Court for Montgomery County entered the December 1 Order, clarifying its previous order denying Ayenu’s motion to vacate, on December 1, 2021. The notation on the document in the record indicates that the document was entered on that date. Our review of the available documents on MDEC also reveals that the document was entered into the system on that date. The printout from Maryland Judiciary Case Search likewise denotes a “File Date” of 12/01/2021 indicating that an order was filed where “Defendant’s request for clarification [sic] is Granted.”

Rule 8-202(a) is “a binding rule on appellants,” and we “continue to enforce” it. *Rosales*, 463 Md. at 568. The circuit court’s order clarifying its prior order denying Ayenu’s motion to vacate, by all available evidence, was entered on December 1, 2021. It was proper for the circuit court to exercise its discretion to strike Ayenu’s subsequent notice of appeal under Rule 8-203 for untimeliness. We affirm that decision.

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