UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0764

September Term, 2014

ROBERT PERSAUD

v.

CHARLES PARRISH, ET AL.

Krauser, C.J.,
Graeff,
Reed,

JJ.

Opinion by Graeff, J.

Filed: June 2, 2015

This appeal raises a procedural question relating to Maryland Rule 2-625, which provides: "A money judgment expires 12 years from the date of entry or most recent renewal. At any time before expiration of the judgment, the judgment holder may file a notice of renewal and the clerk shall enter the judgment renewed." The question presented by Robert Persaud, appellant, who filed a motion to strike or vacate the notice to renew judgment filed by Charles Parrish and Ian Parrish (the "Parrishes"), appellees, is as follows:

> Is a Notice to Renew Judgment, pursuant to Maryland Rule 2-625, a paper requiring service and proof of service in accordance with Maryland Rules 1-321 and 1-323?

The Circuit Court for Baltimore City answered that question in the negative, and we agree. Accordingly, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On May 22, 2001, Mr. Persaud, individually and trading as Baltimore Investment Corporation, Inc., executed a promissory note to the Parrishes for $523,000, with an interest rate of eight percent. The promissory note contained a confession of judgment provision.

On February 19, 2002, after Mr. Persaud failed to pay the $523,000 owed under the note, the Parrishes filed a complaint for confessed judgment in the circuit court. In addition to the $523,000 owed under the note, the Parrishes sought interest from May 22, 2001 to February 12, 2002, totaling $30,606.25, and attorney's fees totaling $83,040.94. The confessed judgment was entered on the docket on February 28, 2002, and on the same date, the court sent Mr. Persaud a confessed judgment notice.

On March 29, 2002, Mr. Persaud was served with the confessed judgment notice. On April 29, 2002, he filed a motion to vacate confessed judgment, arguing that the confessed judgment should be vacated for procedural reasons and because he had a meritorious defense. On June 14, 2002, the court denied Mr. Persaud's motion. On July 12, 2002, Mr. Persaud noted an appeal to this Court, which he subsequently dismissed.

On August 30, 2013, within 12 years of the February 28, 2002, entry of the confessed judgment, the Parrishes filed a notice to renew judgment ("first notice"). The docket entries reflect that the judgment was renewed the same day.

On March 18, 2014, nearly seven months after the Parrishes filed their first notice to renew judgment, Mr. Persaud filed a Motion to Strike or Vacate the Notice to Renew Judgment. He argued that, because the first notice did not contain a certificate of service, it was not properly filed, and therefore, the judgment was not properly renewed.

On April 18, 2014, the Parrishes filed a second notice to renew judgment ("second notice"), which included a certificate of service. The second notice stated:

> Despite the absence of a Certificate of Mailing to the Defendant and his counsel, the Clerk of the Court did accept and docket Plaintiff's original Notice to Renew Judgment on August 30, 2013. This Second Notice to Renew Judgment is filed simply to provide said Certificate of Mailing to the Defendant and his counsel.

The Parrishes also filed an opposition to Mr. Persaud's motion to strike or vacate the first notice, raising three arguments. First, they argued that a notice to renew judgment does not require a certificate of service. In that regard, they argued that Rule 1-323 provides that the clerk "'shall not accept for filing any pleading or other paper requiring service' without an accompanying certificate of service," and a notice to renew is not a

pleading or a "paper requiring service." Second, they argued that the second notice filed on April 7, 2014, included a certificate of service, and because the judgment did not become enrolled or final until June 14, 2002, when the court denied Mr. Persaud's motion to vacate, the notice to renew judgment was timely. Finally, the Parrishes argued that the motion to strike should be denied because "the Clerk's Office failed to notify the Parrishes that a certificate of service was necessary, thereby preventing them from correcting the alleged defect."

On April 24, 2014, Mr. Persaud filed a reply to the Parrishes' opposition, reasserting his argument that notice of service was required. He also asserted that, because the judgment was entered on February 28, 2002, not June 14, 2002, the second notice was not timely, and it was ineffective to renew the judgment.

On May 9, 2014, the court held a hearing on the motion to strike the notice. Mr. Persaud's counsel argued that, pursuant to *Stein v. Smith*, 358 Md. 670 (2000), and the Maryland Rules Commentary, the Parrishes were required to file a certificate of service with the notice of renewal. In response to the court's assertion that *Stein* was "not on point factually," but rather, the discussion about the filing of the notice was *dicta*, Mr. Persaud's counsel agreed. The court also noted that *Stein* involved an entirely different issue, i.e., "whether or not an entity that was once a corporate entity had the authority to" sue or be sued.

On June 5, 2014, after holding the matter *sub curia*, the court denied Mr. Persaud's motion. In its written memorandum and order, the court concluded that the Parrishes' judgment renewal was timely and proper pursuant to Rule 2-625. The court concluded that

this Court, in *State Cent. Collection Unit v. Buckingham*, 214 Md. App. 672 (2013), had "illuminated the procedural requirements for renewing a judgment under" Rule 2-625 and concluded that, because the process for renewing a judgment is not adversarial, a judgment holder need only request, *ex parte*, that the clerk renew a judgment. The court stated that *Stein*, relied on by Mr. Persaud, was "not helpful" because it involved a defunct corporation that brought suit against a landowner to recover payment for work done on a construction contract. Accordingly, the court ruled that a notice to renew judgment is not a pleading or paper subject to the service requirements of Rules 1-321 and 1-323, and the Parrishes properly renewed the judgment with the August 30, 2013, notice.[1]

STANDARD OF REVIEW

The decision whether to grant a motion to strike is a matter within the sound discretion of the trial court. *First Wholesale Cleaners Inc. v. Donegal Mut. Ins. Co.*, 143 Md. App. 24, 41 (2002). *Accord Larocca v. Creig Northrop Team, P.C.*, 217 Md. App.

[1] Maryland Rule 1-321 provides, in relevant part, as follows:

> Except as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney unless service upon the party is ordered by the court.

Maryland Rule 1-323 provides, in relevant part, as follows:

> The clerk shall not accept for filing any pleading or other paper requiring service, other than an original pleading, unless it is accompanied by an admission or waiver of service or a signed certificate showing the date and manner of making service. A certificate of service is prima facie proof of service.

536, 547, *cert. granted*, 440 Md. 225 (2014). A trial judge abuses his or her discretion "where no reasonable person would take the view adopted by the [trial] court." *Maryland-Nat'l Capital Park & Planning Comm'n v. Mardirossian*, 184 Md. App. 207, 217, *cert. dis'd as moot*, 409 Md. 413 (2009).

DISCUSSION

As indicated, pursuant to Rule 2-625, "a money judgment expires 12 years from the date of entry or most recent renewal." Here, there is no dispute that the confessed judgment at issue is a money judgment subject to this rule.

The issue here involves the requisite procedure to renew a judgment. Rule 2-625 provides: "At any time before expiration of the judgment, the judgment holder may file a notice of renewal and the clerk shall enter the judgment renewed." The specific question is whether the notice of renewal is a "paper requiring service" pursuant to Rule 1-323.

Mr. Persaud argues that "a notice to renew judgment is a paper requiring service, and therefore the trial court erred in denying the motion to strike the notice to renew judgment."[2] He asserts that the trial court erred: (1) in relying on *Buckingham* to find that a notice to renew judgment is not an adversarial paper requiring service; and (2) in not considering "the Court of Appeals instruction in" *Stein*.

The Parrishes contend that "the trial court's denial of [Mr.] Persaud's motion to strike was clearly a proper and correct exercise of judicial discretion." They argue that, in

[2] Mr. Persaud agrees that the court correctly recognized that a notice to renew judgment is not a pleading, as defined by Md. Rule 1-202(u), but he argues that it is a "paper requiring service."

Buckingham, this Court conclusively determined that a Notice to Renew Judgment is not a "'paper requiring service' under Md. Rule 1-323." With respect to the argument that *Stein* controls, they assert that the language Mr. Persaud relies upon in a footnote was "clearly dicta," and therefore, it is not binding on this Court.[3]

We begin with Mr. Persaud's assertion that *Stein* "directly resolves the question at issue." As explained below, we disagree.

In *Stein*, a corporation attempted to file a lawsuit after its charter had been forfeited. 358 Md. at 672. The Court of Appeals concluded that a subsequent amendment to name the corporation's stockholder as a plaintiff did not relate back to the date of the filing of the complaint. *Id.* at 678-79. The Court held that, because the corporation was defunct when it filed suit, it lacked the capacity to bring the suit, and therefore, there was nothing to which the amendment could relate back to toll the limitations period. *Id.*

The issue in *Stein* did not remotely involve the issue presented here. Mr. Persaud, however, seizes on a statement in a footnote, which was made in the context of discussing another case, in which the Court stated: "Renewal of a money judgment is effected by filing a notice of renewal with the Clerk of Court. Md. Rule 2-625. Service of the notice of renewal must be made on the judgment debtor in accordance with Rule 1-321." *Id.* at 680, n.5. We agree with the circuit court that this statement in the footnote was *dicta*, and it is

[3] The Parrishes also argue that, even if this Court were to conclude that a notice to renew is a paper requiring service, the court's denial of Mr. Persaud's motion should be affirmed because the second notice to renew judgment, which included a certificate of service, was timely filed. Based on our conclusion that a notice to renew judgment is not a paper requiring service, we need not address this argument.

not binding authority on the issue presented here.[4] Rather, the analysis set forth in this Court's opinion in *Buckingham* informs our analysis.

The issue in *Buckingham* was whether Rule 2-625, providing that a money judgment expires after 12 years from the date of entry or most recent renewal, applied to a judgment held by the State. In deciding that the limitations period was not applicable to a judgment held by the State, Chief Judge Krauser, writing for this Court, conducted a thorough review of the history of the rule. He explained that Rule 2-625 was derived from former Rules 622 and 624, which provided that "a judgment, although ordinarily not enforceable by execution or attachment more than twelve years from the date of the judgment, could be enforced beyond the twelve year period if the judgment holder obtained a writ of *scire facias*," a "writ requiring the person against whom it is issued to appear and show cause why some matter of record should not be annulled or vacated," or "why a dormant judgment against the person should not be revived." *Id.* at 678 & 679, n.6.

[4] *Obiter dictum* is a "judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential." BLACK'S LAW DICTIONARY 1100 (7th ed. 1999). It refers to a statement made by a court "'incidentally or collaterally, and not directly upon the question before [it], or upon a point not necessarily involved in the determination of the cause.'" *Halliday v. Sturm, Ruger & Co.*, 138 Md. App. 136, 160 (2001) *aff'd on other grounds*, 368 Md. 186 (2002) (quoting BLACK'S LAW DICTIONARY 1072 (6th ed. 1990)). *Obiter dictum* lacks the authority of adjudication. *Stover v. Stover*, 60 Md. App. 470, 476 (1984). It is not entitled to the precedential weight afforded the holding because it does not receive "the deliberate and considered judgment" used in phrasing the holding. *State v. Wilson*, 106 Md. App. 24, 36, *cert. denied*, 304 Md. 502 (1995), *rev'd on other grounds*, 519 U.S. 408 (1997).

In 1984, Rules 622 and 624 were amended and became what is now Rule 2-625. *Id.* at 680. The Rules Committee explained that the amended Rule retained the twelve-year limitations period "but simplified the procedure for renewing judgments by substituting a ministerial act by the clerk for the 'adversarial aspects' of a writ of *scire facias*." *Id.* Specifically, the committee stated:

> The renewal procedure is substantially different from existing *scire facias* procedures . . . . Section (b) would eliminate the service and adversarial aspects of *scire facias* by substituting an *ex parte* procedure under which the plaintiff simply files a notice of renewal and the clerk as a ministerial function renews the judgment, unless the court records show that more than 12 years have passed since the judgment was entered or most recently renewed. If more than 12 years have passed the clerk should not renew the judgment, even though no objection to the renewal is filed.

Id. (quoting Minutes, Court of Appeals Standing Committee on Rules of Practice and Procedure, Nov. 20-21, 1981, at 24) (emphasis omitted).

Thus, "according to the rules committee," the revision in the rule "was to simplify the process for renewing a judgment by doing away with the process of *scire facias* and its associated 'service and adversarial aspects.'" *Id.* at 681. Accordingly, under current Rule 2-625, "a judgment holder now need only request, *ex parte*, that the clerk renew the judgment," and the judgment debtor can "rely on the clerk ensuring that a judgment, more than twelve years old, will not be renewed." *Id.* This Court held that "the adoption of Rule 2-625 only changed the procedure for implementing the twelve-year limitations period found in section 5-102 by making the judgment renewal process ministerial instead of adversarial." *Id.* at 683.

This Court's analysis in *Buckingham*, based on the comments of the Rules Committee, compels the conclusion that a notice of renewal is not a "paper requiring service." Rather, filing the notice *ex parte* is all that is required for the clerk, "as a ministerial function," to renew the judgment.

Mr. Persaud argues, however, that due process requires service. In support of that argument, he cites to *Lovero v. DaSilva*, 200 Md. App. 433, 446 (2011), in which this Court stated:

> Rule 1-323 serves the function of assuring the court that procedural due process is accorded to the parties at every step of the litigation process. Because every paper or pleading filed in a case after the original pleading involves either a request to the court to take a specified action or notification of an action or position taken by a party, due process requires that each party be notified thereof.

To be sure, in an adversarial proceeding, due process requires that an individual against whom proceedings are instituted be given notice and an opportunity to be heard. *See Baltimore St. Parking Co., LLC v. Mayor & City Council of Baltimore*, 194 Md. App. 569, 593-94 (2010); *Regan v. Bd. of Chiropractic Exam'rs*, 120 Md. App. 494, 519 (1998), *aff'd on other grounds*, 355 Md. 397 (1999). Here, however, as noted, the filing of a notice of renewal of judgment pursuant to Rule 2-265 does not involve an adversarial proceeding. The judgment already has been obtained, and a renewal merely extends the period of enforceability of the original judgment, which already has been litigated. In this circumstance, due process does not require service of the notice of renewal. *See Wanex v. Provident State Bank of Preston*, 53 Md. App. 409, 419 (1983) (in a post-judgment

garnishment proceeding, due process does not require service of process on the judgment debtor).

In sum, we hold that a notice of renewal is not a "paper requiring service" pursuant to Rule 1-323, and therefore, the circuit court properly determined that the first notice was sufficient to renew the judgment. And because the renewal of a judgment is not an adversarial proceeding, due process does not require service of the notice of renewal. Accordingly, the circuit court did not abuse its discretion in denying Mr. Persaud's motion to strike the notice of renewal.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.