UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0987

September Term, 2014

WILLIAM M. DUNN

v.

A & R DEVELOPMENT CORPORATION,
ET AL.

Eyler, Deborah S.,
Meredith,
Berger,

JJ.

Opinion by Berger, J.
Dissenting Opinion by Meredith, J.

Filed: June 3, 2015

This appeal arises out of the denial of a motion to vacate a dismissal of a civil action for failure to prosecute under Md. Rule 2-507. On appeal, William M. Dunn ("Dunn"), appellant, presents four questions for our review,[1] which we have rephrased as follows:

1. Whether the circuit court erred in denying appellant's motion to vacate the dismissal of this case for lack of prosecution pursuant to Md. Rule 2-507.

2. Whether the circuit court erred in denying appellant's motion to vacate the dismissal of this case without a hearing.

For the reasons stated herein, we shall affirm the judgment of the Circuit Court for Baltimore City.

[1] The questions, as posed by Dunn, are:

1. Did the entry of an Order of Dismissal pursuant to Maryland Rule 2-507(c) require the Clerk to send a copy of said order or ruling to all parties entitled to service?

2. Did the failure of the Clerk to send notice as described above pursuant to Rule 1-324 constitute an irregularity under Maryland Rule 2-535(b) and/or an irregularity or failure of an employee of the Clerk's office to perform a duty required by Section 6-408 of the Courts and Judicial Proceedings Article?

3. Did the clerk ha[ve] authority to enter an Order of Dismissal after a Judge entered an order granting a joint motion for stay of the case pending the resolution or dismissal of a related case?

4. Was a hearing . . . required by Rule 2-311(f) before the Court could issue an order dispositive of Appellant's claim?

FACTS AND PROCEEDINGS

On October 25, 2010, Dunn filed a complaint against appellees, 309 Saratoga LLC and A&R Development Corporation (collectively "appellees"), alleging damages resulting from leaks in the roof and walls of his condominium. Subsequently, on or around June 7, 2011, the condominium association for the complex in which Dunn's condominium was located filed a similar complaint alleging many of the same facts and asserting duplicative claims. Accordingly, on February 2, 2012, Dunn and appellees filed a joint motion to stay Dunn's individual claims pending the resolution of the condominium association's litigation.

On February 9, 2012, the Circuit Court for Baltimore City granted the parties' joint motion to stay. In so doing, the circuit court judge signed an order which read as follows:

> UPON CONSIDERATION of the Joint Motion by Consent to stay Case, it is this 9th day of Feb[ruary] 2012, by the Circuit Court for Baltimore City, Maryland, hereby:
>
> ORDERED, that Defendants' motion be and is hereby GRANTED; and it is further
>
> ORDERED, that the above action is STAYED pending a resolution of the case styled *Council of Unit Owners of the Breco Condominium, Inc., et al. v. 309 Saratoga, et al.*, Case No. 24-C-11-004034. Subject to Md. Rule 2-507[.[2]]

Thereafter, on February 27, 2013, the circuit court issued a Notice of Contemplated Dismissal alerting the parties that, "[p]ursuant to Maryland Rule 2-507 this proceeding will

[2] Although the parties presumably agreed upon the language of the draft order that was presented to the circuit court judge, the language on the order clarifying that the stay is "[s]ubject to Md. Rule 2-507" was handwritten *sue sponte* by the circuit court judge.

be 'DISMISSED FOR LACK OF PROSECUTION WITHOUT PREJUDICE,'30 days after service of this notice, unless prior to that time a written motion showing good cause to defer the entry of an order of dismissal is filed." Dunn then contacted appellees regarding the contemplated dismissal. Thereafter, Dunn apparently drafted a "joint motion by consent to defer the entry of an order of dismissal and continue stay of case"[3] and e-mailed it to appellees on March 5, 2013, but the motion was never filed. The docket entry by the clerk of the court on April 18, 2013 indicates that the case was dismissed for lack of prosecution.

After resolution of the condominium association's litigation, Dunn, on February 26, 2014, filed a motion to vacate the dismissal and requested a hearing. The circuit court, by memorandum and order dated July 14, 2014, denied Dunn's motion without a hearing. This timely appeal followed. Additional facts shall be included as necessitated by our discussion of the issues.

DISCUSSION

I. Jurisdiction to Exercise Revisory Power

Dunn argues that the court erred by failing to find an irregularity and that such error mandates vacating the dismissal that was entered pursuant to Md. Rule 2-507. Appellees,

[3] Dunn avers that the parties had agreed to file a joint motion to defer the entry of dismissal and continue to stay the litigation. Appellees assert that Dunn contacted them requesting information, which was subsequently provided, so that Dunn may file a motion to defer the dismissal. In their brief, appellees are silent as to whether they agreed to join in the motion to defer the dismissal, but in their surreply to Dunn's motion to vacate, they allege that they consented to the filing of a motion to defer dismissal.

and the circuit court, treated Dunn's motion to vacate the dismissal pursuant to Md. Rule 2-535(b).[4] As a preliminary matter, we question whether the circuit court has jurisdiction to exercise revisory power over a dismissal entered pursuant to Md. Rule 2-507.

We first review the typical mechanism by which litigants seek review of judgments, namely Md. Rule 2-535(b). Md. 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." Md. Rule 2-535(b). The purpose of this rule is "'to ensure that technicality does not triumph over justice.'" *Dixon v. Ford Motor Co.*, 433 Md. 137, 157 (2013) (quoting *S. Mgmt. v. Taha*, 378 Md. 461, 495 (2003)). Notably, this rule only permits courts to exercise revisory powers over "judgments." Md. Rule 2-535(b). Indeed, "[r]ule 2-535 is applicable only to final judgments." *Waterkeeper Alliance, Inc. v. Md. Dept. of Agric.*, 439 Md. 262, 277 (2014); *accord Quartertime Video & Vending Corp. v. Hanna*, 321 Md. 59, 65 (1990).

A judgment is defined as "any order of court final in its nature entered pursuant to [the Maryland Rules]." Md. Rule 1-202(o). In order for a judgment to be entered pursuant to the Maryland Rules, the judgment must (1) "be set forth on a separate document"; (2) "be signed by either the judge or the clerk"; and (3) be "in accordance with the requirements of Rule

[4] Additionally, Dunn relies upon authority which interprets Md. Rule 2-535(b). His brief, and the motion filed with the circuit court, however, appear ambiguous as to the precise authority under which the court should exercise its revisory power.

2-601(a) and properly entered under Rule 2-601(b)." *Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 479 (2014) (internal quotations and citations omitted).

In *Hiob*, *supra*, the Court of Appeals addressed whether a stipulated dismissal constituted a judgment so as to permit a litigant to pursue an appeal. 440 Md. at 472. There, the Court of Appeals held that a stipulated dismissal was not a judgment because it failed to satisfy the separate document requirement of Md. Rule 2-601. *Id.* Indeed, in *Hiob*, *supra*, the Court of Appeals instructs us that in order to hold that there is a final judgment we must answer all of the following questions in the affirmative:

- Is there a final judgment?
- Is there a separate document?
    - Is there a document in the court file separate from the docket entry?
    - Does the document reflect a judicial action that grants or denies specific relief in an unqualified way?
    - Has the separate document been signed by the judge or the clerk?
- Has the clerk docketed the judgment in accordance with the practice of the court?

Id. at 503.

A textual reading of Md. Rule 2-535(b) suggests that the rule would be inapplicable if an event which terminates a lawsuit fails to satisfy the attendant circumstances necessary to constitute a judgment. Notwithstanding the unavailability of Md. Rule 2-535(b) to remedy

non-judgments, it remains unclear whether any means exist by which a court may exercise its revisory powers over cases that are dismissed for lack of prosecution. When the Court of Appeals decided *Hiob*, it distinguished its previous holding in *Claibourne v. Willis*, 347 Md. 684 (1997), which allowed a court to use its revisory power over the termination of an action which did not constitute a judgment.

In *Claibourne*, *supra*, the Court of Appeals considered whether Md. Rule 2-535(b) was an available mechanism by which to remedy a mistaken or irregular stipulated dismissal. 347 Md. at 690. There, the question before the Court of Appeals was whether a court could exercise revisory power over an action that terminates a lawsuit yet fails to constitute a "judgment" under Md. Rule 1-202(o). In finding that the principles outlined in Md. Rule 2-535(b) are applicable, the Court of Appeals held:

> **Rule 2-535(b) does apply to a voluntary dismissal with prejudice, signed by all of the parties.** At least one effect of the dismissal with prejudice is the same as the court entered final adjudication of the merits. "When the stipulation is made with prejudice, the voluntary dismissal has the same res judicata effect as a final adjudication on the merits favorable to the defendant." 8 J.W. Moore, *Moore's Federal Practice* § 41.34[6][c] (1997) (footnote omitted). Because of the similarity between the effect of a dismissal with prejudice by stipulation and a dismissal with prejudice by the court, **the review of the circuit court's discretion should be under standards analogous to those under Rule 2-535(b), even if that rule is not directly applicable.**

Id. at 692 (emphasis added).

Accordingly, *Claiborne* holds that there may be some circumstances where Rule 2-535(b) is inapplicable, and yet we nevertheless apply "standards analogous to those under Rule 2-535." *Id.*; *Hiob*, *supra*, 440 Md. at 491. Prior to *Hiob*, *supra*, the use of a court's revisory power over dispositions that failed to satisfy conditions necessary to constitute a judgment, specifically those involving the failure of a litigant to prosecute his case, were routinely held to be appropriate. *See Owen v. Freeman*, 279 Md. 241, 245-46 (1977). Indeed:

> [T]his Court has consistently indicated that judgments entered in situations virtually identical with that of the present case are subject to this revisory power. We have held that a judgment of *non pros*, the same type that was entered here, is final for purposes of the applicability of Rule 625a,[5] *Williams v. Snyder, Adm'r*, 221 Md. 262, 267, 155 A.2d 904, 907 (1959); that a dismissal for want of prosecution pursuant to local rules of other circuits is subject to the trial court's Rule 625 a revisory power, *Tydon v. Spong*, 237 Md. 107, 110-11, 205 A.2d 220, 222 (1964) (Fourth Maryland Judicial Circuit); *Petite v. Estate of Papachrist*, 219 Md. 173, 177, 148 A.2d 377, 380 (1959) (Circuit Court for Howard County); *Crawford v. Richards*, 193 Md. 236, 243, 66 A.2d 483, 486 (1949) (Circuit Court for

[5] Rule 2-535(b) "is derived from former Rule 625a." Paul v. Niemeyer & Linda M. Schuett, Maryland Rules Commentary 416 (2d ed. 1992). Similar to Md. Rule 2-535(b), former rule 625a governed a court's revisory power over its "judgment." Prior to Rule 625a, however, the revisory power of the court was governed by General Rules of Practice and Procedure, Part 2, VI, Rule 1, effective 12 November 1947, which provided courts with revisory power over "the doing of an act or thing in any cause . . . which they have under the practice heretofore existing, or which they had under practice existing prior to the adoption of a special provision of any Public Local Law herewith superseded, during the term at which it was done." Prior to the General Rules of Practice and Procedure, the rule at common law was that "[e]very judgment is subject to the control of the court until the lapse of the term at which it is rendered . . . ." *Townshend v. Chew*, 31 Md. 247, 250 (1869).

> Allegany County); and that a dismissal for failure to place a case on the consolidated trial docket in accordance with Supreme Bench Rule 528 C is not exempt from the operation of Rule 625 a. *Mut. Benefit Soc'y v. Haywood*, 257 Md. 538, 540, 263 A.2d 868, 870 (1970). *See also Bowen v. Rohnacher*, 15 Md. App. 280, 290 A.2d 560, *cert. denied*, 266 Md. 742 (1972) (where Court of Special Appeals applied Rule 625 a to case dismissed under Supreme Bench Rule 528 L(2)). With respect to Maryland Rule 530, the statewide prescription governing dismissals for lack of prosecution in civil cases, we think it is significant that the Committee Note to Section c (appearing at page 274 of Volume 9B of the Maryland Code (1957, 1971 Repl.Vol.)), as that Section was originally adopted, stated that 'relief (from a Rule 530 dismissal) may be granted under Rule 625.'[6]

Id. at 245-46. The general theme running through these cases is that "[a] dismissal for want of prosecution is in the nature of a final judgment over which a court has revisory power and control [and is, accordingly,] analogous to an enrolled judgment." *Petite*, *supra*, 219 Md. at 177 (citing *Crawford*, *supra*, 193 Md. 236). Accordingly, because the Court of Appeals has permitted the availability of the relief sought prior to *Hiob*, we address the merits of the extant appeal.[7]

[6] A judgment *non pros*, Supreme Bench Rule 528 C, Supreme Bench Rule 528 L(2), and former Maryland Rule 530 were all predecessors to Md. Rule 2-507 and govern dismissals for lack of prosecution.

[7] We simply defer to the plethora of authorities which have held a court's revisory power to be an appropriate mechanism by which to review an action that was dismissed for failure to prosecute. The question as to whether those authorities are compatible with the Court of Appeals holding in *Hiob*, *supra*, is a question better left for another day.

II. The Circuit Court Did Not Abuse Its Discretion in Denying Dunn's Motion to Vacate

A. Standard of Review

"We review 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)). Indeed, the Court of Appeals has articulated the appropriate standard of review as follows:

> As regards [an appellant's] challenge to [a trial judge's] denial of his Md. Rule 2–535(b) motion, abuse of discretion is the benchmark. *Das v. Das*, 133 Md.App. 1, 15, 754 A.2d 441, 449 (2000). Abuse of discretion occurs "where 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." *North v. North*, 102 Md.App. 1, 13–14, 648 A.2d 1025, 1031 (1994). We will find an abuse of discretion when the ruling is "clearly against the logic and effect of facts and inferences before the court[,]" when the decision is "clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result[,]" when the ruling is "violative of fact and logic[,]" or when it constitutes an "untenable judicial act that defies reason and works an injustice." *Id.* (internal quotation marks omitted).

Powell v. Breslin, 430 Md. 52, 62 (2013).[8] Accordingly, we will find there to be an abuse

[8] We reject Dunn's assertion that we are to review the denial of his motion under a *de novo* standard. Indeed, we must distinguish between an appeal of the merits of a final judgment, and the situation here, where we are sought upon to review the trial court's denial of a motion to exercise its inherently discretionary revisory power to vacate a dismissal. *New Freedom Corp. v. Brown*, 260 Md. 383, 386 (1971) ("An appeal from a denial of a motion to strike or rescind a judgment does not serve as an appeal from that judgment and the question presented is whether or not the hearing judge abused his discretion."). To be sure,

(continued...)

of discretion only "in the extraordinary, exceptional, or most egregious case." *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005).

B. The Dismissal of Dunn's Action Was Not Irregular

Dunn argues that his motion to vacate a dismissal for lack of prosecution pursuant to Md. Rule 2-507 should have been granted because the dismissal was entered as a result of an "irregularity." In order to grant a motion to vacate a judgment pursuant to Md. Rule 2-535(b), the trial judge must find the existence of a "fraud, mistake, or irregularity." Md. Rule 2-535(b). "The terms 'fraud, mistake, or irregularity' as used in Rule 2-535(b) and its predecessor, Rule 625(a), are narrowly defined and are to be strictly applied." *Early v. Early*, 338 Md. 639, 652 (1995).

Dunn alleges that there are several irregularities for which the circuit court should have granted his motion to vacate the dismissal. Those "irregularities" include: (1) his failure to receive notice of the dismissal from the clerk; (2) the dismissal is inconsistent with the order from the trial court granting the stay; and (3) the court failed to comply with Md. Rule 2-601. We address each of these arguments in turn.

An irregularity "'which will permit a court to exercise revisory powers over an enrolled judgment has been consistently defined as the doing or not doing of that, in the

[8] (...continued)
Dunn raises sub-issues that are purely legal which we will review *de novo*. The ultimate inquiry, however, is whether the judge's decision, taking into account the alleged errors, amounts to an abuse of discretion.

conduct of a suit at law, which, confirmable to the practice of the court, ought or ought not be to be done.'" *Manigan v. Burson*, 160 Md. App. 114, 121 (2004) (quoting *Billingsley v. Lawson*, 43 Md. App. 713, 720 (1979)). "In other words, an 'irregularity' is a failure to follow required process or procedure." *Early*, *supra*, 338 Md. at 652. Moreover, "'the failure of an employee of the court or of the clerk's office to perform a duty required by statute or Rule'" may constitute an irregularity. *Estime v. King*, 196 Md. App. 296, 307 (2010) (quoting *J.T. Masonry Co. v. Oxford Constr. Servs., Inc.*, 74 Md. App. 598, 607 (1988)).

For the reasons stated below, we reject Dunn's arguments and hold that the circuit court did not err in failing to find an irregularity sufficient grant Dunn's motion to vacate.

I. The Notice of the Dismissal Was Sufficient.

Dunn asserts that the clerk had a duty to provide him notice of a dismissal entered pursuant to Md. Rule 2-507, and that the failure to send said notice was an irregularity under Md. Rule 2-535(b). In support, Dunn relies on *Dypski v. Bethlehem Steel Corp.*, 74 Md. App. 692 (1988), for the proposition that the failure to "send a copy of the order of dismissal to [Dunn] was an irregularity within the meaning of Md. Rule 2-535(b). The hearing court was, therefore, empowered[9] to revise the judgment." *Id.* at 699.

[9] Notably, the word "empowered" indicates that the circuit court retains the discretionary function to decide when it is appropriate to review a judgment. Indeed, the presence of an irregularity is a necessary, but not sufficient, condition so as to invoke the revisory power of the court under Md. Rule 2-535(b).

In *Dypski*, *supra*, a lawsuit went without prosecution for just over a year before the clerk sent a notice of contemplated dismissal to the parties pursuant to Md. Rule 2-507(d). *Id.* at 694. After receiving the notice of contemplated dismissal, the plaintiff filed a motion to defer dismissal pursuant to Md. Rule 2-507(e). *Id.* The court subsequently deferred the dismissal for one year. *Id.* at 694-95. After the expiration of a year, while the parties were engaged in discovery, the case was dismissed. *Id.* at 695. Furthermore, no notice of the dismissal was sent to either party at any time after the deferral was granted. *Id.* We reasoned in *Dypski*, *supra*, that review under Md. Rule 2-535(b) was appropriate because it was irregular for no notice to be given after the dismissal so as to "'prevent hardships which may result from a lack of notice and the corresponding lack of an opportunity to interpose defenses prior to enrollment of a judgment.'" *Id.* at 696 (quoting *Alban Tractor Co., Inc. v. Williford*, 61 Md. App. 71, 77 (1984)).

The case *sub judice* is notably distinguishable from *Dypski*, *supra*, because the notice of contemplated dismissal here was sufficient to provide Dunn an opportunity to prevent hardship by simply filing a motion to defer dismissal. In *Dypski*, *supra*, over a year expired between the latest docket entry or any other communication from the circuit court and the subsequent dismissal. In contrast, the clerk in the instant case sent a notice of contemplated dismissal just over a month before the dismissal was subsequently entered.

We agree with appellant that the Maryland Rules require that parties be given notice if a case is to be dismissed for a lack of prosecution. Md. Rule 2-507(d); *Thomas v.*

Ramsburg, 99 Md. App. 395, 405-06 (1994). We disagree, however, that the notice of contemplated dismissal Dunn received was insufficient, and therefore constitutes an irregularity.[10] Indeed, Md. Rule 2-507 "is self-executing, in the sense that it is actuated by inaction of the parties and the passage of time." *Stanford v. District Title Ins. Co.*, 260 Md. 550, 554 (1971); *Powell v. Gutierrez*, 310 Md. 302, 308 (1987) ("If no motion [to defer dismissal] is filed, the case should be automatically dismissed and removed from the active docket.").

In the present case, notice was sent to Dunn pursuant to the requirements outlined in Md. Rule 2-507(d). This case is significantly distinguishable from *Dypski*, *supra*, where we imposed a heightened notice requirement in order to "prevent hardships which may result from a lack of notice" when the litigation was under an order to defer the operation of Rule 2-507, and the most recent docket entry was over a year old. *Dypski*, *supra*, 74 Md. App. at 696. Accordingly, we hold that the clerk did not err in providing notice of a contemplated dismissal pursuant to the procedure outlined in Rule 2-507(d).[11]

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[10] Although irregularity is a term-of-art which has a specific legal meaning when used in the context of Md. Rule 2-535(b), we pause briefly to observe that there is nothing irregular about the notice that was provided in this case. Indeed, circuit courts typically notify litigants about a contemplated dismissal for lack of prosecution in the precise manner that was done here.

[11] Assuming, *arguendo*, that the clerk erred in failing to properly notify Dunn, relief under Md. Rule 2-535(b) is not necessarily mandated. If Dunn had actual knowledge of the contemplated dismissal and failed to act "with ordinary diligence and in good faith upon a meritorious cause of action or defense" under Md. Rule 2-535(b), relief would nevertheless

(continued...)

ii. Dismissal Was Not Inconsistent With the Stay Order.

Dunn further argues that the dismissal entered against him was irregular because the dismissal was inconsistent with the stay order issued by the trial judge on February 9, 2012. Dunn avers that by handwriting "subject to Md. Rule 2-507" the trial judge merely intended to articulate the possibility that the condominium association's litigation may be dismissed pursuant to that rule, and not that Dunn's litigation would remain subject to that rule. We are not persuaded.

When the circuit court issued the stay order in Dunn's litigation it had no reason whatsoever to comment or speculate as to the potential outcomes in a matter unrelated to the issue before it. Similar to our interpretation of contracts or statutory provisions, we will only find an ambiguity "'if, when read by a reasonably prudent person, it is susceptible of more than one meaning.'" *Baker v. Baker*, 221 Md. App. 399, 409 (2015) (quoting *Calomiris v. Woods*, 353 Md. 425 436 (1999)). Here, the trial judge clearly intended to clarify that the stay she was ordering would remain subject to Md. Rule 2-507. No reasonable person would understand the trial judge's handwritten clause at the end of her order to do anything other than make it expressly clear that Dunn's litigation would remain subject to Md. Rule 2-507. We, therefore, hold that the dismissal pursuant to Md. Rule 2-507 was not inconsistent with the trial judge's stay order.

[11] (...continued)
be inappropriate notwithstanding the existence of an irregularity. *J.T. Masonry Co., Inc.*, *supra*, 314 Md. at 505-06.

iii. Dismissal Was not Irregular because it Failed to Comply with Md. Rule 2-601(a).

Dunn further avers that there was an irregularity sufficient to mandate relief under Md. Rule 2-535(b) because "the Order[12] of Dismissal entered on April 18, 2013 did not comply with the requirements of Maryland Rule 2-601(a)." Initially, for the reasons set forth in Part I, *supra*, we agree with Dunn that the event which terminated his action was not in compliance with Md. Rule 2-601, and therefore, did not constitute a judgment. *Hiob*, *supra*, 440 Md. 466 (outlining the necessary conditions that must be satisfied to constitute a judgment). The question then becomes whether a docket entry which terminates a lawsuit, but is not a judgment, constitutes an irregularity under Md. Rule 2-535(b). We hold that it is not.

An irregularity is "'the doing or not doing of that, in the conduct of a suit at law, which, confirmable to the practice of the court, ought or ought not be to be done.'" *Manigan*, *supra*, 160 Md. App. at 121 (quoting *Billingsley*, *supra*, 43 Md. App. at 720). "In other words, an 'irregularity' is a failure to follow required process or procedure." *Early*, *supra*, 338 Md. at 652. Here, there was no failure to follow a required process nor was Dunn's matter handled in a manner not compatible to the practice of the court. Indeed, nowhere in

[12] It is not entirely accurate to imply that this dismissal was the result of an order. Indeed, the April 18, 2013 docket entry is devoid of the word order. Additionally, for the reasons stated in Part II(B)(i), *supra*, a dismissal made pursuant to Md. Rule 2-507 is not made via an order, but rather "by inaction of the parties and the passage of time." *Stanford*, *supra*, 260 Md. at 554.

Md. Rule 2-507 is it required that the procedures outlined in Md. Rule 2-601 occur as a condition precedent to dismissal. Moreover, there are myriad ways in which a matter may be terminated other than through a judgment which complies with *Hiob*, *supra*.[13] We, therefore, hold that a dismissal for failure to prosecute, although not a judgment, is not irregular so as to mandate relief under Md. Rule 2-535(b).

III. No Hearing Was Required For The Trial Judge To Deny Dunn's Motion to Vacate

Lastly, Dunn argues that he was entitled to a hearing before the denial of his motion to vacate the dismissal of his action. We disagree. Under the rule, a hearing was required only if the circuit court were inclined to grant appellant's motion. *See* Md. Rule 2-311(e). Md. Rule 2-311 provides that a court has discretion to determine whether a hearing is necessary, "but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested . . . ." The question, then, is whether the denial of a motion to vacate is dispositive of a claim or defense.

"A decision is dispositive when it 'conclusively settles a matter.'" *Parker v. Hous. Auth. of Balt.*, 129 Md. App. 482, 488 (1999) (quoting *Lowman v. Consol. Rail Corp.*, 68 Md. App. 64, 76, *cert. denied*, 307 Md. 406 (1986). Further, "'the words 'claim' and 'defense' [a]re to be narrowly construed.'" *Logan v. LSP Mktg. Corp.*, 196 Md. App. 684, 696 (2010) (quoting *Shelton v. Kirson*, 119 Md. App. 325, 329-30 (1998)). Indeed:

[13] For example, in addition to failing to prosecute a claim under Md. Rule 2-507, the parties may settle their claims and stipulate to dismiss or voluntarily dismiss the action.

> For a decision to be deemed dispositive of a claim or defense within the contemplation of Rule 2-311(f), it must actually and formally dispose of the claim or defense. It is not enough to argue that it is the functional equivalent of a dispositive decision or that it lays the inevitable predicate for such a decision.

Id. (quoting *Shelton*, *supra*, 119 Md. App. at 330).

Dunn correctly avers "an order of dismissal conclusively settles a matter, and therefore should not be entered without a hearing if one is requested." (citing *Parker*, *supra*, 129 Md. App. at 482). Nevertheless, the trial court was not required to hold a hearing prior to denying the appellant's motion to vacate even though a hearing was requested. *See Pelletier v. Burson*, 213 Md. App. 284, 292-93 ("[A] dispositive decision is one that conclusively settles a matter. If the possibility that the court might reconsider or reverse its decision would prevent that decision from being dispositive of a claim or defense, then even final, i.e., appealable, judgments could be said not to be dispositive, because even they may be subject to revision.").

The fact that an underlying dismissal is dispositive, however, is distinguishable from Dunn's motion to vacate that dismissal. As we have previously explained, "[b]y denying the motion for reconsideration, the court merely refused to change its original ruling which had disposed of appellant[']s claims. That ruling was not 'dispositive of a claim or defense,' and thus no hearing was mandated under Rule 2-311(f) even though a hearing was requested." *Lowman v. Consolidated Rail Corp.*, 68 Md. App. 64, 76 (1986) ("By denying the motion for reconsideration, the court merely refused to change its original ruling which disposed of

appellants' claims. That ruling was not 'dispositive of a claim or defense,' and thus no hearing was mandated under Rule 2-311(f) even though a hearing was requested."). We, therefore, hold that Rule 2-311(f) does not require the court to grant a request for a hearing on a motion to vacate a dismissal filed pursuant to Md. Rule 2-507.

IV. Conclusion

For the reasons stated above, we affirm the judgment of the Circuit Court for Baltimore City. We hold that the circuit court did not abuse its discretion by denying Dunn's motion to vacate the dismissal of an action for failure to prosecute. Furthermore, we hold that it was not necessary for the circuit court to hold a hearing prior to denying Dunn's motion to vacate the dismissal of this case.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

UNREPORTED

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JJ.

Dissenting Opinion by Meredith, J.

Filed: June 3, 2015

Although I agree with nearly all of the analysis in the majority opinion, I reach a different conclusion with respect to whether the clerk was obligated to provide notice to the parties after making the docket entry dismissing the case. Maryland Rule 1-324 provides, in pertinent part: "Upon entry on the docket of any order or ruling of the court not made in the course of a hearing or trial, the clerk shall send a copy of the order or ruling to all parties entitled to service under Rule 1-321, unless the record discloses that such service has already been made." Notwithstanding the fact that there was language in the notice of contemplated dismissal warning the parties that "this proceeding will be 'DISMISSED FOR LACK OF PROSECUTION WITHOUT PREJUDICE,' 30 days after service of this notice, unless prior to that time a written motion . . . is filed," the court did not actually *dismiss* the case until the implementing docket entry was made by the clerk. Given the significance of the clerk's docket entry that a case has been dismissed pursuant to Maryland Rule 2-507(f), I would hold that the clerk is obligated under Rule 1-324 to provide a copy of the docket entry to all parties entitled to service under Rule 1-321.

I acknowledge that Rule 1-324 applies only to the "entry on the docket of any *order or ruling of the court* not made in the course of a hearing or trial" (emphasis added), and the docket entry that is the subject of this appeal does not expressly state that the court has made an additional ruling. The subject docket entry states simply: "Dismissed w/o prejudice as to Md. Rule 2-507(c)." But a docket entry such as this is expressly required by Rule 2-507(f), and is the functional equivalent of an order of dismissal. Indeed, describing this case-ending

docket entry as anything other than a ruling of the court would raise even more questions and uncertainty about the status of the case and the finality of the dismissal.

In my view, our holding in *Dypski v. Bethlehem Steel Corp.*, 74 Md. App. 692 (1988), supports appellant's contention that the clerk was obligated to provide all parties a notice after the case had been dismissed by the court. In *Dypski*, a case on appeal from the Workmen's Compensation Commission "lay dormant for a little over a year from the date of the last docket entry." *Id*. at 694. As a consequence, the clerk sent the plaintiff a notice of contemplated dismissal pursuant to Rule 2-507(d). The plaintiff successfully moved to suspend the contemplated dismissal for one year, but the order deferring dismissal provided: "that if the 'case . . . is not tried or otherwise disposed of in said one year period, it *shall be dismissed* for want of prosecution at the expiration thereof.' (Emphasis supplied.)" *Id*. at 694-95. After the lapse of just over one year, an order dismissing the case for lack of prosecution was docketed. But no copy of the order or any other notice of the dismissal was sent to the parties. *Id*. at 695. The plaintiff's motion to revise the judgment on the basis of irregularity was denied by the circuit court. On appeal, we reversed and remanded for further proceedings.

Chief Judge Richard Gilbert wrote for our Court, noting that, prior to the adoption of the rule that is now Rule 1-324, the Court of Appeals had held that no notice was required when a court dismissed a case for lack of prosecution, citing *Pappalardo v. Lloyd*, 266 Md. 512, 514-15 (1972), "wherein the Court [of Appeals] held that '[t]he formal Order of

Dismissal entered by the court . . . required no further notice and simply reduced to writing what was an accomplished fact.'" Chief Judge Gilbert wrote: "While it is true that Dypski's failure to comply with the express terms of the order which suspended the operation of Md. Rule 2-507 effectively operated as a dismissal of the case, as in *Pappalardo*, . . . **a notice of such dismissal is now required under Md. Rule 1-324**. That rule was not in existence [when *Pappalardo* was decided] in 1972." 74 Md. App. at 697-98 (emphasis added).[1] Chief Judge Gilbert stated in *Dypski*, 74 Md. App. at 698-99: "By its express terms, [Rule 1-324] places upon the clerk the affirmative duty of notifying *all* parties entitled to service of *any* order or ruling entered on the docket outside of the presence of the parties. The notification is effected by mailing to the parties a copy of the order. . . ."

Consequently, we concluded in *Dypski*: "The clerk's failure to adhere to the command of Rule 1-324 and send a copy of the order of dismissal to Dypski was an irregularity within the meaning of Md. Rule 2-535(b). The hearing court was, therefore, empowered to revise the judgment." *Id*. at 699. As a closing comment, we stated: "We conclude by observing that Md. Rule 2-507 was promulgated to remove 'dead' cases from the docket, not to penalize plaintiffs for the procrastination of their attorneys." *Id*. at 699-700.

[1] In *Union Memorial Hospital v. Dorsey*, 125 Md. App. 275, 296 n.3 (1999), we stated in dicta: "Under Md. Rule 1-324, which was not in existence when *Pappalardo* was decided, notice of dismissal is now required [when a case is dismissed for lack of prosecution]. *Dypski*, 74 Md. App. at 697-98, 539 A.2d 1165."

In *Dypski*, there was a separate order of dismissal, and the irregularity we identified was the clerk's failure to mail the litigants a copy of that order. In the present case, it appears that the dismissal was effected by an entry on the docket with no separate document. Although the lack of a separate document is a factual distinction from the circumstances in *Dypski*, the docket entry in the present case, as discussed above, served the same purpose as the order of dismissal in *Dypski*, and the obligation of the clerk to provide copies pursuant to Rule 1-324 should be the same in both cases. In my view, the fact that the cautionary order providing for dismissal upon certain conditions predated the dismissal by a year in *Dypski* but only by a month in the present case does not alter the obligation of the clerk to mail copies of the documentation of the actual dismissal once the court puts an end to the case.

The Court of Appeals also has held that the failure to send a notice required by Rule 1-324 is an irregularity that may be addressed under Rule 2-535. *Early v. Early*, 338 Md. 639, 653 (1995) ("The requirements of Rule 1-324 were not satisfied because the clerk failed to send a copy of the order to all parties. This failure to follow required procedure was an 'irregularity' within the meaning of Rule 2-535(b).").

Although demonstrating that an irregularity accompanied the entry of judgment is "only the first step in answering whether appellant is entitled to a revision of the order of dismissal, because a [movant under Rule 2-535(b)] must *also* show that he has acted with ordinary diligence and in good faith," *Estime v. King*, 196 Md. App. 296, 308 (2010), it is

not clear from the circuit court's order in this case that the judge who ruled on the motion to vacate — without providing the requested hearing — considered anything beyond the appellee's contention that no irregularity was present. In any event, appellant has provided persuasive evidence that this was not a "dead" case at the time it was dismissed. *See Dypski*, 74 Md. App. at 699-700. Consequently, I would reverse and remand for further consideration.