Circuit Court for Montgomery County
Case No. 478002V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1114

September Term, 2024

MARK A. SCHWARTZ

v.

EAGLEBANK

Arthur,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 4, 2026

This appeal involves a judgment-creditor's efforts to collect on its judgment. At its core, the appeal concerns the judgment-debtor's attack on a charging order that requires a corporation to pay to the judgment-creditor any distributions that would otherwise go to the judgment-debtor. We shall hold that the circuit court did not abuse its discretion in declining to revise that order on grounds of fraud, mistake, or irregularity.

FACTUAL AND PROCEDURAL BACKGROUND

On January 30, 2020, EagleBank obtained a $3.5 million judgment against Alan M. Schwartz, M.D., J.D., in the Circuit Court for Montgomery County. This Court affirmed the judgment on August 3, 2021.

In its efforts to collect upon the judgment, EagleBank concluded that Dr. Schwartz owned shares in Mesh Suture, Inc. ("MSI"), an Illinois corporation. On April 25, 2023, EagleBank moved for a charging order on Dr. Schwartz's interest in MSI.[1] The requested charging order would apply against Dr. Schwartz's interest in MSI, whether held individually or in a revocable trust of which he is a beneficiary.

On May 23, 2023, the circuit court imposed a charging order against MSI. Among other things, the charging order required MSI to deliver to EagleBank "any and all

[1] In general, a charging order is an order that allows a judgment-creditor to garnish the distributions, profits, or other things of value that a partnership owes to a partner against whom the judgment-creditor has a judgment. *See* Md. Rule 2-649; *91st Street Joint Venture v. Goldstein*, 114 Md. App. 561, 571 (1997). In *Burnett v. Spencer*, 230 Md. App. 24, 32-34 (2016), this Court concluded that a circuit court may use Maryland Rule 2-651, the so-called "catch-all" or "wild card" provision of the rules pertaining to execution on judgments, to fashion a charging order against a shareholder's interest in a corporation—i.e., against a shareholder's right to receive distributions from the corporation.

distributions, including without limitation, all assets, property, profits, funds, contributions, interest payments or other distributions of any kid [sic] to be paid" to Dr. Schwartz after the date of the charging order. In addition, the charging order prohibited MSI from remitting any distributions to Dr. Schwartz while the order was in effect. The charging order stated that it constituted a lien on Dr. Schwartz's interest in MSI. The charging order also stated that EagleBank could "enforce the lien through such other and proper means if so determined by" the circuit court.[2]

EagleBank says that it received no distributions pursuant to the charging order. Consequently, on January 12, 2024, EagleBank filed what it called a "Motion to Authorize Enforcement of Lien of Charging Order for Purposes of Private Sale of Stock." The motion asserted that the charging order "expressly created a lien against Schwartz's stock in MSI," whether in his name or in the name of his trust.[3] Although the record does not contain a proposed order, EagleBank wrote that it sought to have the court "[o]rder MSI to reissue the shares in MSI held by Schwartz pursuant to a private sale of the shares

[2] At the time of the charging order, no one seems to have questioned how a Maryland court had the power to compel an Illinois corporation to pay to EagleBank the distributions that were otherwise due to Dr. Schwartz. That issue is, however, no longer material, as MSI has appeared in this action and has submitted to the jurisdiction of the Maryland court. *See* note 4, below.

[3] More precisely, the charging order created a lien in Dr. Schwartz's "interest" in MSI—i.e., his right to distributions from the corporation. It did not create a lien in his shares of stock. In general, "[t]he interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy[.]" Maryland Code (1975, 2013 Repl. Vol.), § 8-112(a) of the Commercial Law ("CL") Article (§ 8-112(a) of the Uniform Commercial Code).

through the exercise of its lien of the Charging Order against the shares, regardless of whether such shares are held individually or in the Trust or any other trust, in the name of a private buyer so that [EagleBank] may recover a portion of its Judgment." We interpret this language as a request for the court to order MSI "to reissue the shares in MSI held by Schwartz" and then, presumably, to sell them at a private sale.[4]

Dr. Schwartz opposed the motion. Among other things, he argued that he had never owned shares in MSI. Instead, he asserted, the Mark Alan Schwartz Mesh Suture Revocable Trust had owned the shares.[5] Moreover, he asserted, the trust had conveyed its shares to a trust for the benefit of his wife, Yajia Hu Schwartz. At most, he argued, he had a contingent interest in the shares, depending on whether he outlived his wife.

In a reply to Dr. Schwartz's opposition, EagleBank presented a number of documents showing that Dr. Schwartz retained his shares in MSI. For example, EagleBank attached an affidavit from MSI's chairman, Gregory A. Dumanian, M.D., who averred:

- that MSI had not issued or authorized the issuance of shares to Dr. Schwartz's trust, to Dr. Schwartz's wife, or to a trust for the benefit of Dr. Schwartz's wife;

- that MSI has no record reflecting the transfer of Dr. Schwartz's shares;

[4] MSI, which by now had appeared in the action and had submitted to the jurisdiction of a Maryland court, did not oppose the motion.

[5] By its terms, however, the charging order applied against Dr. Schwartz's interest in MSI, whether held individually or in a revocable trust of which he is a beneficiary.

- that MSI's corporate documents prohibited Dr. Schwartz from transferring his shares without the written permission of MSI's board;
- that MSI had never approved, authorized, or consented to the transfer of Dr. Schwartz's shares;
- that, according to a decision by the United States District Court for the Northern District of Illinois, Dr. Schwartz's employment with MSI was terminated effective November 29, 2019; and
- that Dr. Schwartz had no authority to act on MSI's behalf after that date.

EagleBank also attached copies of Dr. Schwartz's share certificates. The certificates contain handwritten notations reflecting that Dr. Schwartz, as the trustee of his trust, had purported to convey them to his wife's trust on January 17, 2020, 13 days before EagleBank obtained the judgment against him, and almost two months after he lost any authority to act on MSI's behalf.

In addition, EagleBank included a memorandum opinion from federal litigation in Illinois that concerns a dispute over the control over MSI and involves members of the Dumanian family, Dr. Schwartz, Dr. Schwartz's wife, and two of Dr. Schwartz's businesses. In that opinion, which was issued on June 20, 2023, the federal district court largely denied the Dumanians' motion for summary judgment but granted the motion "to the extent" the Dumanians sought a declaration that Dr. Schwartz "was lawfully terminated from his employment at [MSI] as of November 29, 2019."

Finally, EagleBank included two court filings from a lawsuit that MSI had brought against Dr. Schwartz in a state court in Colorado. In those filings, which were dated November 9 and December 21, 2023, Dr. Schwartz asserted that he, rather than Dr.

Dumanian, controlled MSI. In one of them, Dr. Schwartz asserted that he "is" MSI's "majority shareholder."[6]

On February 8, 2024, the circuit court denied the motion for a private sale of Dr. Schwartz's stock.

In conjunction with the opposition to the motion for a private sale of Dr. Schwartz's stock, Dr. Schwartz's wife, Yajia Hu Schwartz, had filed what she called a "notice of appearance" both in her individual capacity and as the trustee of her trust. Dr. Schwartz also filed what he called a "notice of appearance" in his capacity as the trustee of his trust. The "notice[s] of appearance" did not purport to be motions to intervene, nor did they comply with or even cite Rule 2-214, which governs intervention. The notices claimed to be for the "special and limited purpose" of contesting jurisdiction and objecting to the motion for a private sale of the stock.[7]

EagleBank moved to strike Ms. Schwartz's "notice of appearance." In support of the motion, EagleBank argued, among other things, that Ms. Schwartz was not a party to the action and that she had not moved to intervene. EagleBank also moved to strike what

[6] The Colorado filings disclosed that Dr. Schwartz had been indicted in Illinois on federal criminal charges relating to a dispute with Dr. Dumanian over the control of MSI. The charges are still pending.

[7] The notice of appearance for Dr. Schwartz's trust was superfluous because the charging order ran against Dr. Schwartz's interest in MSI, whether held individually or in a revocable trust of which he is a beneficiary.

it characterized as a notice of appearance on behalf of Dr. Schwartz's trust.[8] Again, EagleBank argued that the trust had not moved to intervene. In opposition to both "notices of appearance," EagleBank argued that under Maryland Rule 2-131 only an attorney can make a "special appearance." The court granted the motions to strike the notices of appearance on March 28, 2024, and April 1, 2024, respectively.

Meanwhile, on March 15, 2024, EagleBank had filed what it called a "Motion to Order Judicial Sale of Judgment-Debtor's Interest in a Corporation Pursuant to Charging Order." Unlike the prior motion, the new motion asked the court to order a judicial sale of Dr. Schwartz's "interest" in MSI rather than his stock. The motion, however, characterized Dr. Schwartz's "Corporate Interest" not as the distributions that MSI might pay to Dr. Schwartz, but as "250 Series F Preferred, 25 Series A, and 12 Series A-2 shares of stock in MSI." In support of its motion, EagleBank cited three cases, all of which pertain to charging orders that affect a debtor's interest in a partnership or limited partnership: *Green v. Bellerive Condos. L.P.*, 135 Md. App. 563 (2000); *Lauer Constr., Inc. v. Schrift*, 123 Md. App. 112 (1998); and *91st Street Joint Venture v. Goldstein*, 114 Md. App. 561 (1997).

[8] Notwithstanding this characterization, a trust is typically viewed as neither a legal entity nor an association. *See, e.g.*, *Bonner v. Henderson*, 147 F.3d 457, 459 (5th Cir. 1998) (per curiam). Instead, "[a] trust is 'a fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another.'" *Id.* (quoting BLACK'S LAW DICTIONARY (6th ed. 1990)).

In an effort to preemptively rebut Dr. Schwartz's contention that he did not own any shares in MSI, EagleBank re-attached the affidavit in which Dr. Dumanian averred that Dr. Schwartz could not transfer his shares without MSI's approval, that MSI had not approved the transfer of his shares, and that (per the federal court's decision) Dr. Schwartz had no authority to act on MSI's behalf after November 29, 2019. In addition, EagleBank attached excerpts from a court filing in litigation in federal court in Illinois. In that document, which Dr. Schwartz filed on September 18, 2023, he supported his motion for summary judgment by asserting that he "is the majority controlling shareholder of [MSI] since January 1, 2018."

Dr. Schwartz opposed the motion on March 29, 2024. Notwithstanding his assertions to the federal court in Illinois and the assertions in Dr. Dumanian's affidavit, Dr. Schwartz claimed, as he had before, that he (as opposed to his trust) had never owned any shares in MSI. He also claimed that his trust had conveyed those shares to his wife's trust "before the lawsuit even arose[.]" Among his many other assertions in the lengthy opposition, Dr. Schwartz contended that the court lacked "jurisdiction" to issue an order affecting what he characterized as his wife's trust's interest in the MSI shares.

Simultaneously with his opposition to the motion for an order for a judicial sale of his interest in MSI, Dr. Schwartz filed what he called a motion to "vacate, alter, or amend" the charging order. Dr. Schwartz premised the motion on Rule 2-535(b), which authorizes a court to revise an enrolled judgment at any time on grounds 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 lengthy motion repeated many of the arguments and factual assertions in the opposition to the motion for an order for a judicial sale of Dr. Schwartz's corporate interest and the earlier opposition to the motion for an order for a judicial sale of Dr. Schwartz's stock.

On April 9, 2024, the circuit court granted the motion for an order for a judicial sale of Dr. Schwartz's interest in MSI. The order directed that the sale should be conducted in accordance with Maryland Rules 2-641, 2-642, and 2-644.[9]

Dr. Schwartz noted an appeal on the following day. The notice of appeal purported to encompass the order authorizing a judicial sale of Dr. Schwartz's interest in MSI and the orders striking the "notices of appearance."

On April 16, 2024, Dr. Schwartz moved to stay the order authorizing the judicial sale. He purported to act on his own behalf, on behalf of his wife, individually and as trustee of her trust, and on behalf of himself as trustee of his trust. In support of the motion, Dr. Schwartz argued, among other things, that because he claimed to have

[9] Rule 2-641 pertains to writs of execution directing the sheriff to levy upon property of the judgment debtor to satisfy a money judgment. Rule 2-642 pertains to the means by which the sheriff levies upon real or personal property pursuant to a writ of execution. Rule 2-644 authorizes the sheriff, upon request of the judgment creditor, to sell property under levy. It is unclear how one can "levy" upon an intangible interest, such as the right to receive distributions from a corporation. *Burnett v. Spencer*, 230 Md. App. at 29 n.2. If the shares owned (or formerly owned) by Dr. Schwartz are certificated securities, as both parties say, a debtor's interest in them "may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy[.]" CL § 8-112(a).

transferred his (beneficial) interest in the shares to his wife's trust, the court had no "jurisdiction" to authorize the sale. EagleBank opposed the motion.

Despite the notice of appeal, Dr. Schwartz continued to litigate the case in circuit court. He filed motions for a "rule" requiring EagleBank to "show cause" (1) why its opposition to the motion to modify the charging order should not be "stricken & denied," (2) why its opposition to a stay should not be "stricken or denied," and (3) why the order authorizing the judicial sale should not be "vacated for fraud, mistake, and irregularity" pursuant to Maryland Rule 2-535(b).

On June 3, 2024, the court ordered EagleBank to show cause why the opposition to a stay should be not "Stricken and Denied." The court did not immediately rule on the other "show cause" motions, but it set a hearing, which was eventually scheduled for July 24, 2024.

On July 9, 2024, EagleBank filed a request for a writ of execution. In that document, EagleBank asked the sheriff to levy upon all of Dr. Schwartz's "interests" in MSI, which, EagleBank said, was "located at 7501 Wisconsin Avenue, Suite 1000W," in Bethesda, the address of MSI's counsel. EagleBank asserted that the property on which the sheriff would levy "includes" Dr. Schwartz's "[c]ertificated shares" in MSI.

Dr. Schwartz immediately moved to quash the request for a writ of execution. Before the court ruled on the motion, however, the sheriff purported to levy upon Dr. Schwartz's corporate interest. A document titled "Schedule of Attached Property" indicates that on July 23, 2024, the sheriff levied on Dr. Schwartz's preferred shares and

"alleged 'common shares'" in MSI. It appears, however, that the sheriff levied only on unendorsed photocopies of the stock certificates[10] and that the actual certificates are located in Puerto Rico, where Dr. Schwartz and his wife reside.

The court conducted a hearing on the pending motions on July 24, 2024. At the outset of the hearing, the court required Dr. Schwartz's wife to sit in the gallery rather than at the trial table, because she was not a party to the case.

After hearing extensive argument, the court denied the motion to vacate the charging order, the motion to stay enforcement of the order authorizing the judicial sale, and the motions to show cause. In addition, the court appears to have stricken the pending notice of appeal insofar as it pertained to Dr. Schwartz's trust, Dr. Schwartz's wife, and his wife's trust.[11]

On August 5, 2024, Dr. Schwartz filed a second notice of appeal. The second notice of appeal purports to be on behalf of Dr. Schwartz, individually and as trustee of his trust, and Yahia Hu Schwartz, individually and as trustee of her trust.

[10] *But see* CL § 8-112(a).

[11] The order is titled "Order Striking Notice of Appeal," but the substance of the order says: "Motion to Strike is DENIED."

WHAT ISSUES ARE BEFORE US?

Dr. Schwartz raises numerous questions on appeal.[12] Before we begin to address those questions, however, we must determine which rulings are potentially appealable and which are properly before us.

This determination involves two questions. First, does anyone have the right to appeal from the ruling in question? Second, is the appeal timely?

[12] Dr. Schwartz's brief lists the following "issues:"

1. Did the Court err by exercising jurisdiction over absent necessary parties, their non-Maryland property, and the MSI share and board control dispute?

2. Did the Court err in permitting EagleBank, Dumanian, and MSI to litigate a collateral control dispute within the limited scope [of a] Rule 2-611 action?

3. Did the trial court violate the Appellants' procedural and substantive due process rights?

4. Did the Court err by authorizing and failing to vacate its orders relating to the attachment and sale of property 'of another' in which the debtor retained no chargeable property interest?

5. Did the Court err in not granting the Appellants' Rule 2-535(b) motions to vacate its April 9, 2024, order authorizing sale and to vacate/amend its May 23, 2023, charging order due to fraud, mistake, and irregularity?

6. Did the court err in not quashing the writ of attachment and levy?

7. Did the Court err by authorizing the sale without requiring EagleBank to meet its necessary jurisdictional, evidentiary, and legal burdens?

Our power to decide appeals is derived solely from statute—principally, section 12-301 of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2020 Repl. Vol.) ("CJP"). In general, under CJP section 12-301, a party may appeal only "from a final judgment entered in a civil or criminal case by a circuit court." "To have the attribute of finality, the ruling must be so final as either to determine *and conclude* the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding." *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989) (emphasis in original).

The analysis of finality is particularly challenging in this appeal, because it involves post-judgment litigation: the circuit court already entered a final judgment on January 30, 2020, when it found Dr. Schwartz liable to EagleBank for $3.5 million. Thus, this appeal concerns enforcement proceedings, which are typically considered to be "collateral" to the underlying judgment. *See 91st Street Joint Venture v. Goldstein*, 114 Md. App. 561, 574 (1997).

Even when an order is final or otherwise appealable, a party must note an appeal "within 30 days after entry of the judgment or order from which the appeal is taken." Md. Rule 8-202(a). This Court must dismiss an appeal if "the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202." Md. Rule 8-602(b)(2).

In the notice of appeal, Dr. Schwartz and his alleged co-appellants claim to have appealed from the following orders:

- The charging order, which was entered on May 23, 2023.
- The order striking the appearance of Yahia Hu Schwartz, individually, and as trustee of her trust, which was entered on March 28, 2024.
- The order striking the appearance of Dr. Schwartz's trust, which was entered on April 1, 2014.
- The order granting the motion for a judicial sale of Dr. Schwartz's interest in MSI pursuant to the charging order, which was entered on April 9, 2024.
- The order denying the motion to strike MSI's opposition to the motion to modify the charging order and for sanctions, which was entered on July 9, 2024.
- The order denying the motion to vacate, alter, or amend the charging order, which was entered on July 29, 2024.
- The order denying the motion to show cause why the opposition to the motion to modify the charging order should not be stricken, which was entered on July 29, 2024.
- The order denying the motion to stay enforcement of the order authorizing the judicial "sale of stock"[13] pending appeal and to waive any bond requirement, which was entered on July 29, 2024.

[13] The order in question, which was entered on April 9, 2024, did not authorize the sale of stock; it authorized the sale of Dr. Schwartz's corporate interest in MSI pursuant to the charging order. That interest, as described in the charging order, is the right to receive distributions from the corporation.

- The order denying the relief requested in the motion to show cause why the opposition to a stay of the judicial sale should not be stricken, which was entered on July 29, 2024.
- The order denying the motion to show cause why the order authorizing the "sale of stock"[14] should not be vacated for fraud, mistake, and irregularity, which was entered on July 29, 2024.
- The order striking the first notice of appeal, which was entered on July 29, 2024.
- The order denying the motion to quash the writ of execution, which was entered on July 29, 2024.[15]

The notice of appeal, filed on August 5, 2024, is untimely as to many of those orders. For that reason, many of the orders are not properly before us.

[14] As stated in note 13, above, the order in question did not authorize the sale of stock; it authorized the sale of Dr. Schwartz's right to receive distributions from the corporation. In general, "[t]he interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy[.]" CL § 8-112(a).

[15] The appellants attached two other documents to the notice, thus apparently contending that they too were the subject of the appeal. Those documents are: (1) a request for a writ of execution, which EagleBank filed on July 9, 2024; and (2) an order requiring EagleBank to show cause why its opposition to a stay should not be stricken and denied. The first document—a request, filed by counsel—is not a judgment or an appealable order. The second document is a court order, but it is an order granting the relief that the appellants requested. Even if that order were somehow appealable, Dr. Schwartz could not appeal from it, because a party may not appeal from a ruling that is entirely in its favor. *See*, *e.g.*, *Paolino v. McCormick & Co.*, 314 Md. 575, 582 (1989).

The orders striking the appearances of Yajia Hu Schwartz and of Dr. Schwartz's trust are not before us. The clerk entered those orders on docket on March 28, 2024, and April 1, 2024, respectively. In general, an appellant must note an appeal "within 30 days after entry of the judgment or order from which the appeal is taken." Md. Rule 8-202(a). The appellants, however, did not note the appeal in this case until August 5, 2024—much more than 30 days after the entry of the orders striking the appearances. Therefore, even if those orders were otherwise appealable,[16] the appellants failed to note a timely appeal from them.[17]

The order authorizing the judicial sale of Dr. Schwartz's corporate interest in MSI is not before us. A judicial sale is not complete and final upon the authorization of the sale, or even upon occurrence of the sale itself. Instead, under Maryland Rule 14-305, a court must ratify the sale. And before the court may ratify the sale, a party may file exceptions to the sale. *See* Md. Rule 14-305(f). Consequently, orders pertaining to a judicial sale would appear to be interlocutory and thus generally unappealable until the court has overruled any exceptions and ratified the sale. *See Huertas v. Ward*, 248 Md. App. 187, 204-05 (2020) (holding that an order ratifying a foreclosure sale is a final

[16] "The denial of a motion to intervene is an appealable final order." *In re Malichi W.*, 209 Md. App. 84, 88 n.3 (2012). The notices of appearance, however, did not invoke the rule regarding intervention or assert a basis for mandatory or permissive intervention.

[17] Because the orders striking the notices of appearance are not before us, the only appellant is Dr. Schwartz. As stated before, the order striking the "notice of appearance" of Dr. Schwartz's trust is superfluous because the charging order, by its terms, applies to Dr. Schwartz's interest in MSI, whether held individually or in a trust of which he is a beneficiary.

judgment as to any rights in the real property); *91st Street Joint Venture v. Goldstein*, 114 Md. App. 561, 575-76 (1997) (holding that a charging order that envisioned the sale of the judgment-debtor's interest in a partnership would not become a final judgment until the court ratified the sale).

The charging order is not before us. The clerk entered that order on the docket on May 23, 2023—14 months before the notice of appeal. Therefore, assuming that the charging order was otherwise appealable,[18] the appellants failed to note a timely appeal from it. *See* Md. Rule 8-202(a).

The notice of appeal is timely as to the other orders, which were entered between July 9, 2024, and July 29, 2024. At least two of those orders, however, are moot.

The order striking the first notice of appeal became moot when this Court dismissed the first appeal on August 28, 2024, because of the failure to file a brief. It makes no difference whether the circuit court erred in striking a notice of appeal where this Court later dismissed the appeal because of the failure to prosecute it.

In addition, the order denying the motion to quash the writ of execution was moot when it was entered, as the sheriff had purported to levy on Dr. Schwartz's corporate

[18] In *91st Street Joint Venture v. Goldstein*, 114 Md. App. 561, 575-76 (1997), this Court held that a charging order that envisioned the sale of the judgment-debtor's interest in the partnership was not a final judgment. We reasoned that the order would not become final until the court ratified the sale. *Id.* By contrast, in *Keeler v. Academy of American Franciscan History, Inc.*, 178 Md. App. 648, 655-56 (2008), this Court distinguished *91st Street Joint Venture* and held that a charging order was a final judgment where it did "not direct the transfer of [the judgment-debtor's] interest in the partnership" but "simply require[d] that any distributions owed [him] be paid directly to [the judgment-creditor] until the debt [was] satisfied."

interest in MSI pursuant to the writ of execution on July 23, 2024, six days before the court denied the motion to quash the writ of execution. The court could not quash a writ of execution that had already been served.

The order denying the motion to stay enforcement of the order authorizing the judicial "sale of stock"[19] pending appeal and to waive any bond requirement is not before us. Maryland Rule 8-422(c) describes the proper means for obtaining appellate review of a circuit court's decision to stay or not to say a ruling pending appeal:

> After an appeal has been filed, on motion of a party who has first sought relief in the lower court, the Appellate Court, with or without a hearing, may (1) deny the motion; (2) increase, decrease, or fix the amount of the supersedeas or criminal appeal bond; (3) enter an order as to the surety or security on the bond, other security, or the conditions of the stay; or (4) enter an order directing further proceedings in the lower court.

Dr. Schwartz sought relief in the lower court, but he did not move this Court for a stay or for relief from the general requirement that he post a bond or other security in an amount sufficient to compensate his adversary if the stay had been entered erroneously. If he wishes to have appellate review of the order denying the stay, Dr. Schwartz must file a motion under Rule 8-422(c).

The order denying the relief requested in the motion to show cause why the opposition to a stay of the judicial sale should not be stricken is not before us. Although

[19] As previously stated, the order in question did not authorize the sale of stock; it authorized the sale of Dr. Schwartz's interest in MSI pursuant to the charging order. The interest described in the charging order is the right to receive distributions from the corporation.

Dr. Schwartz appealed within 30 days of the entry of that order, the order is in the nature of an interlocutory decision that the circuit court may reconsider at any time before the sale occurs. And if and when a sale occurs, Dr. Schwartz or another aggrieved party may obtain appellate review of an order ratifying or declining to ratify the sale.

The order denying the motion to vacate, alter, or amend the charging order is properly before us. "The *denial* of a motion to vacate an enrolled judgment is a final order, subject to appeal, as there is nothing left to be done in the circuit court." *Davis v. Attorney General*, 187 Md. App. 110, 122 (2009) (emphasis in original). The clerk entered the order denying the motion to vacate the charging order on the docket on July 29, 2024. Dr. Schwartz noted his appeal less than 30 days later, on August 5, 2024. To that extent, therefore, Dr. Schwartz has appealed from an appealable judgment.

Two of the orders from which Dr. Schwartz has claimed to appeal concern motions that overlap with his motion to vacate the charging order. These are: the order denying the motion to strike MSI's opposition to the motion to modify the charging order and for sanctions, which was entered on July 9, 2024; and the order denying the motion to show cause why the opposition to the motion to modify the charging order should not be stricken, which was entered on July 29, 2024. Dr. Schwartz noted his appeal less than 30 days later, on August 5, 2024. Consequently, we will consider those orders in conjunction with the order denying the motion to vacate, alter, or amend the charging order.

QUESTION PRESENTED

Based on our evaluation of the issues before us, we have formulated the question presented as follows: Did the court err or abuse its discretion in denying the Rule 2-535(b) motion to revise the charging order on grounds of fraud, mistake, or irregularity?

DISCUSSION

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." The terms "fraud," "mistake," and "irregularity 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)); *accord Early v. Early*, 338 Md. 639, 652 (1995).

In the context of Rule 2-535(b), "fraud" means "extrinsic fraud"—that is, "[f]raud . . . [that] actually prevents an adversarial trial" and "prevent[s] the actual dispute from being submitted to the fact finder at all." *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990). "'[M]istake'" "means jurisdictional mistake, such as where the court lacks the power to enter the judgment because it does not have jurisdiction over the person or . . . subject matter." *Facey v. Facey*, 249 Md. App. 584, 639 (2021). "'[I]rregularity'" means "a failure to follow required process or procedure[,]" as occurs, for example, when the court clerk fails to properly notify the parties of judgments entered in a case. *Early v. Early*, 338 Md. at 652.

To prevail on a Rule 2-535(b) revisory motion, the movant bears the burden of establishing the existence of fraud, mistake, or irregularity by clear and convincing evidence. *See Facey v. Facey*, 249 Md. App. at 601. On appeal from the denial of such a motion, "'the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion.'" *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 400-01 (2006) (quoting *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997)).

Rule 2-535(b) reflects a strong policy in favor of putting an end to litigation (*see, e.g.*, *Penn Cent. Co. v. Buffalo Spring & Equip. Co.*, 260 Md. 576, 585 (1971); *Bland v. Hammond*, 177 Md. App. 340, 357 (2007)) and of fostering the certainty and reliability of enrolled judgments. *See Powell v. Breslin*, 430 Md. 52, 70 (2013). "The overarching aim of Md. Rule 2-535(b) . . . is the preservation of the finality of judgments, unless specific conditions are met." *Id.* at 71.

> [O]nce parties have had the opportunity to present before a court a matter for investigation and determination, and once the decision has been rendered and the litigants, if they so choose, have exhausted every means of reviewing it, the public policy of this State demands that there be an end to that litigation.

Schwartz v. Merchants Mortg. Co., 272 Md. 305, 308 (1974); *accord Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366 (2013).

Many of Dr. Schwartz's arguments have nothing to do with the bases for revising an enrolled judgment—extrinsic fraud, jurisdictional mistake, or clerical irregularity. He complains at length about what he calls procedural defects in EagleBank's efforts to

enforce the judgment, asserting that EagleBank lacks "standing" and that it was required to prove that Dr. Schwartz had fraudulently conveyed his shares to his wife. He complains that MSI (and its attorney, and Dr. Dumanian) lack "standing" and cannot be heard on the question of whether Dr. Schwartz has conveyed his shares in MSI. These arguments have no bearing on whether the court erred or abused its discretion in declining to revise the charging order.

Dr. Schwartz argues that EagleBank and Dr. Dumanian engaged in "fraud" when they asserted that Dr. Schwartz retained an interest in MSI, that Dr. Dumanian was the chairman of MSI's board, and that the MSI stock was located in Maryland.[20] This is not the kind of "fraud" that permits the revision of an enrolled judgment. In the context of Rule 2-535(b), "fraud" means "extrinsic fraud"—that is, "fraud [that] actually prevents an adversarial trial" and "prevent[s] the actual dispute from being submitted to the fact finder at all." *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990). "'[A]n enrolled decree will not be vacated even though obtained by the use of forged documents, perjured testimony, or any other frauds which are "intrinsic" to the trial of the case itself.'" *Billingsley v. Lawson*, 43 Md. App. 713, 719 (1979) (quoting *Schwartz v. Merchants Mortg. Co.*, 272 Md. 305, 308 (1974)). "[A]ssertions of fraud related to what [a party] believes to have been fraudulent signatures and affidavits, do not rise to the level of

[20] It is unclear when EagleBank or MSI represented that the stock was located in Maryland. The sheriff purported to levy on photocopies of certificates that were located in Maryland.

extrinsic fraud." *Pelletier v. Burson*, 213 Md. App. at 291. Dr. Schwartz has not established "fraud," within the meaning of Rule 2-535(b).

Dr. Schwartz argues that a "[m]istake arose when the court erroneously believed that [he] retained an in interest in MSI shares, despite," what he calls "uncontroverted evidence" that he never owned shares in his own name and that he "irrevocably transferred" his shares to his wife as trustee of her trust. This is not the kind of "mistake" that permits the revision of an unenrolled judgment. "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)). "The typical kind of mistake occurs when a judgment has been entered in the absence of valid service of process; hence the court never obtains personal jurisdiction over a party." *Tandra S. v. Tyrone W.*, 336 Md. 303, 317 (1994); *accord Peay v. Barnett*, 236 Md. App. at 322. An erroneous finding of fact or conclusion of law does not qualify as a "mistake" within the meaning of Rule 2-535(b).

Dr. Schwartz argues that "irregularity" occurred because of what he characterizes as "procedural errors," such as excluding his wife, whom he calls a "necessary part[y]." This is not the kind of "irregularity" that permits the revision of an enrolled judgment. "Irregularities warranting the exercise of revisory powers most often involve a judgment that resulted from a failure of process or procedure by the clerk of a court, including, for example, 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 v. Hale*, 146 Md. App. 203, 219-20 (2002); *accord Estime v. King*, 196 Md. App. 296, 307 (2010) (stating that an irregularity typically involves the failure of an employee of the court or of the clerk's office to perform a duty required by statute or a rule); *J.T. Masonry Co. v. Oxford Constr. Servs., Inc.*, 74 Md. App. 598, 607 (1988) (same). For example, in *Mutual Benefit Society of Baltimore, Inc. v. Haywood*, 257 Md. 538, 541 (1970), the Court held that dismissal without the required notice was an "irregularity" within the meaning of the predecessor of Rule 2-535(b). Similarly, in *Gruss v. Gruss*, 123 Md. App. 311, 320 (1998), this Court held that the clerk's failure to mail a copy of an order of dismissal to the address listed in the plaintiff's most recent pleading constituted an "irregularity." And in *Estime v. King*, 196 Md. App. at 308, this Court held "the clerk's failure to send a copy of the court's orders" to a party's address of record "constituted an irregularity of process" under Rule 2-535(b)). The allegedly erroneous exclusion of a putative necessary party is not an "irregularity" within the meaning of Rule 2-535(b).

Although Dr. Schwartz has not established fraud, mistake, or irregularity in his direct attempt to do so, he raises a number of jurisdictional challenges. We shall consider these challenges because they arguably fall under the category of jurisdictional mistake.

Dr. Schwartz contends that the circuit court "exercise[d] jurisdiction over parties and property beyond its legal authority[.]" In support of this contention, he argues, first, that the court authorized the attachment of his shares, which, he says, are in Puerto Rico. He asserts that the shares are beyond the court's territorial jurisdiction.

Dr. Schwartz misunderstands the scope of the charging order. Although EagleBank has claimed that the charging order reaches Dr. Schwartz's shares, the order, by its terms, extends only to Dr. Schwartz's "interest"—his right to distributions from MSI. The charging order compels MSI to pay those distributions to EagleBank rather than to Dr. Schwartz. MSI has submitted to the jurisdiction of the circuit court. The circuit court, therefore, has not "exercise[d] jurisdiction over parties and property beyond its legal authority."

Dr. Schwartz also contends that the circuit court lacked personal jurisdiction over his wife, his wife's trust, and his trust. We need not decide whether the court had personal jurisdiction over Ms. Schwartz, whether in her individual capacity or as trustee of her trust, as the charging order pertains solely to Dr. Schwartz's interest in MSI. The charging order, therefore, has no effect on the interest, if any, that Ms. Schwartz, individually or as trustee, may have acquired from her husband.

The charging order does reach Dr. Schwartz's interest in MSI, whether held in his own name or as trustee for his trust. The order, however, properly reaches that interest, because the circuit court unquestionably had personal jurisdiction over Dr. Schwartz—otherwise, it could not have entered the $3.5 million judgment, whose validity he does not challenge. And contrary to Dr. Schwartz's erroneous supposition, his trust is not akin to a foreign corporation over which the circuit court must acquire jurisdiction. A trust is a fiduciary relationship between a trustee and a beneficiary; it is not an independent legal entity like a corporation or an LLC. *See, e.g.*, *Bonner v. Henderson*, 147 F.3d 457, 459

(5th Cir. 1998) (per curiam). In an action pertaining to trust assets, a proper party is the trustee in his capacity as trustee. The charging order reaches Dr. Schwartz in that capacity.

Dr. Schwartz argues that the court "exceeded its jurisdiction" by ordering the attachment of a "non-debtor's" property before EagleBank had established that the non-debtor had received the property by means of a fraudulent conveyance. By "non-debtor," Dr. Schwartz presumably means his wife.[21] His argument fails for the same reason as his previous argument: the charging order has no effect on the interest, if any, that Ms. Schwartz, individually or as the trustee of her trust, may have acquired from her husband.

Dr. Schwartz argues that the charging order "impinge[s]" upon the "exclusive jurisdiction" of the federal district court that is overseeing the dispute between him and the Dumanians over the control of MSI. Although the federal case appears to be an in personam action for damages and declaratory relief, Dr. Schwartz claims that the federal court has somehow obtained "jurisdiction over a res"—the MSI shares. He contends that the sale of the shares would undermine the federal court's "exclusive authority over the MSI shares." Again, Dr. Schwartz misapprehends the scope of the charging order.

[21] Dr. Schwartz tacitly recognizes that, if he transferred his shares to his wife only days before EagleBank obtained a multi-million dollar judgment against him, as he claims to have done, EagleBank could attack the transfer on the ground that it was a fraudulent conveyance. *See* Maryland Code (1975, 2013 Repl. Vol.), §§ 15-201 to -214 of the Commercial Law Article. He argues, however, that EagleBank could reach the property in his wife's hands only if it first obtained a judgment establishing that she had received a fraudulent conveyance.

Although EagleBank asserted that the order reaches his shares in MSI, the order, by its terms, applies only to Dr. Schwartz's "interest"—i.e., his right to receive distributions.

Dr. Schwartz argues that he has only a contingent interest in MSI and that a contingent interest is not subject to attachment or garnishments. His argument assumes that he has transferred his interest to his wife and that he will reacquire the interest only if she predeceases him. Although we need not decide the question, a court would have ample reason to conclude Dr. Schwartz has *not* transferred his interest to his wife. In fact, Dr. Schwartz's account of whether he has an interest in MSI seems to depend principally on whether he will benefit by saying that he has an interest: in Illinois and Colorado, he said that he does, but in Maryland he says that he does not. In any event, if a court determines that Dr. Schwartz no longer has an interest in MSI despite his statements to the contrary, then EagleBank will simply be left with a charging order that has no value.

Dr. Schwartz argues that the court violated his wife's right to due process of law by denying her the opportunity to challenge Dr. Dumanian's testimony (which was that Dr. Schwartz could not transfer his shares without MSI's approval, that MSI had not approved the transfer of his shares, and that the purported transfer occurred after Dr. Schwartz no longer had the ability to act on MSI's behalf). Similarly, he complains that the court excluded "necessary and interested parties," namely, his wife, individually and as the trustee of her trust. These complaints are a variant of the complaint that the court erred in striking Ms. Schwartz's notice of appearance. That complaint is not before us, in

part because Ms. Schwartz failed to file a timely notice of appeal. In any event, the charging order has no effect on Ms. Schwartz, or on anyone other than Dr. Schwartz (individually and as trustee of his trust).[22]

In another argument concerning the court's exercise of "jurisdiction," Dr. Schwartz argues that the court authorized the sale of the MSI shares without determining whether he owned the shares or whether the shares were within the jurisdiction of a Maryland court. The premise for Dr. Schwartz's argument is incorrect. The court did not authorize the sale of anyone's shares in MSI. The court's charging order authorized the sale of Dr. Schwartz's interest—his right to receive distributions from the corporation.[23]

Dr. Schwartz advances additional arguments, but they do not pertain to the charging order, the decision not to revise the charging order, or the effect of fraud, mistake, or irregularity on the charging order. Instead, they concern the decision not to quash the writ of attachment, which is moot, and the effort to attach and sell his "Corporate Interest," which is not before us. Consequently, we do not consider those arguments.

[22] Dr. Schwartz also complains that the court struck his wife's "notice of appearance" and prevented her from presenting evidence. These issues, too, are not properly before us. Even if these issues were before us, which they are not, Dr. Schwartz waived them by failing to make a proffer of the evidence that the witness would have put forth. *See*, *e.g.*, *Muhammad v. State*, 177 Md. App. 188, 286-87 (2007).

[23] The order authorizing a judicial sale of Dr. Schwartz's corporate interest seems to have led to the sheriff levying on photocopies of Dr. Schwartz's stock certificates. That order, however, is not before us yet. If a sale of the photocopies ever actually occurs, the parties will have the opportunity to debate the legal consequences of that sale.

In summary, Dr. Schwartz has not established that the circuit court abused its discretion in denying his motion to revise a charging order that reaches his interest in MSI and that requires MSI to pay to EagleBank any distributions that it would otherwise be obligated to pay to Dr. Schwartz, whether in his individual capacity or as trustee of his trust.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. APPELLANT TO PAY COSTS.