Circuit Court for Allegany County
Case No. C-01-CV-19-000312

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1220

September Term, 2020

GEORGE HARPOLD

v.

BUCKLEY'S 24 HOUR TOWING

Fader, C.J.
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 22, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 2019, George Harpold, appellant, filed a complaint for negligence against Buckley's 24 Hour Towing, appellee, in the Circuit Court for Allegany County, alleging that a vehicle owned by appellee had struck him after running a "caution light." During the course of litigation, appellee filed a motion to compel claiming that Mr. Harpold had failed to provide responsive answers to its discovery requests. The court granted that motion and ordered appellant to respond to appellee's discovery requests within 10 days. Approximately one month later, Mr. Harpold produced additional discovery responses. However, appellee claimed that those responses were inadequate because Mr. Harpold had not provided any information regarding his medical records, medical bills, and potential expert witnesses. As a result, appellee filed a motion for sanctions requesting the court to dismiss the complaint due to Mr. Harpold's failure to comply with its order granting the motion to compel. On September 23, 2020, the court granted the motion for sanctions and dismissed Mr. Harpold's complaint with prejudice.

On October 8, 2020, Mr. Harpold filed a "response" to the motion for sanctions, wherein he claimed that he had "met every request for information received from the Defendant." He further asserted that he had "never received a copy of the request for Sanctions of Dismissal or alternative relief, from the Defendant" and requested the court to put the case "on hold" and schedule a hearing. The court treated the response as "a request to reconsider the sanctions and dismissal of [the] case" and denied the motion the same day. Mr. Harpold did not file a notice of appeal. Rather, on October 19, 2020, he filed a second motion to revise the judgment, again claiming that appellee had not sent him a copy of the motion for sanctions. The court denied that motion on November 9, 2020,

noting that appellee had included "a certificate of service on both the Memorandum and Motion for Sanctions." Again, Mr. Harpold did not appeal. Instead, on November 18, 2020, he filed a third motion to revise the judgment, wherein he asserted that, even if appellee had sent him a copy of the motion, he had not received it. The court denied that motion on December 3, 2020. Mr. Harpold filed a notice of appeal on December 29, 2020.

On appeal, Mr. Harpold contends that the court erred in denying his third revisory motion because he did not receive a copy of the motion for sanctions and therefore, "[i]t was impossible for [him] to defend" against the motion prior to the court dismissing his complaint. For the reasons that follow, we shall affirm.

Because Mr. Harpold's November 18 motion was filed more than 30 days after the entry of judgment dismissing his complaint, the only possible avenue under which he could have obtained relief was Maryland Rule 2-535(b). *See Kent Island, LLC v. DiNapoli*, 430 Md. 348, 366 (2013) (noting that after 30 days have passed after the entry of a final judgment, a court may only modify its judgment upon a motion filed pursuant to Rule 2-535(b)). Even if we were to construe his motion as having been filed pursuant to that Rule, to vacate or modify an enrolled judgment pursuant to Rule 2-535(b), a movant must establish the existence of either fraud, mistake, or irregularity. Moreover, the party moving to set aside the judgment is required to show that he or she acted with ordinary diligence, in good faith, and had a meritorious defense or cause of action. *Tandra S. v. Tyrone W.*, 336 Md. 303, 314 (1994) (superseded by statute on other grounds).

For the sake of argument, we assume that the failure of one party to send another party a dispositive motion could constitute an irregularity within the meaning of Rule

2-535(b). But appellee's motion for sanctions contained a certificate of service. And there is a presumption that mail is received by the addressee. *See Landover Assocs. Ltd. P'Ship v. Fabricated Steel Prod., Inc.*, 35 Md. App. 673 681 (1977).

And although that presumption is rebuttable, Mr. Harpold's motion contained no evidence to support vacating the judgment. To be sure, Mr. Harpold generally alleged that he had not received the motion for sanctions. However, Maryland Rule 2-311(d) provides that a "motion . . . that is based on facts not contained in the record shall be supported by affidavit[.]." And none of the statements in Mr. Harpold's Rule 2-535(b) motion were supported by affidavit or other documentation, as required by Rule 2-311. Therefore, the motion was properly denied for that reason alone. *See Scully v. Tauber*, 138 Md. App. 423, 431 (2001) (noting that facts set forth in a motion that does not comply with Rule 2-311 are not "appropriately before the court"). Moreover, even if the motion had been supported by affidavit, there was nothing in the motion demonstrating that Mr. Harpold would have had a meritorious defense to the motion for sanctions. Consequently, the court did not err in denying Mr. Harpold's Rule 2-535(b) motion.[1]

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

[1] It is also questionable whether Mr. Harpold acted with due diligence in pursuing his claim regarding his receipt of the motion for sanctions. It is clear from the record that he was aware of this issue prior to the judgment becoming enrolled, as he raised it in his first motion to revise the judgment. However, when that motion was denied by the court, he did not file a notice of appeal. Rather, he waited for the judgment to become enrolled and then filed two more revisory motions raising the same claim. It was only after the third revisory motion was denied that he sought relief in this Court.