UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1518

September Term, 2014

KENNETH JOHNSON

v.

CLIFTON J. GORDY

Eyler, Deborah S.,
Graeff,
Hotten,

JJ.

Opinion by Hotten, J.

Filed: November 24, 2015

*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 2004, appellant, retired Baltimore City Circuit Court Judge Kenneth Johnson, filed a complaint against a real estate brokerage firm that had previously sold a parcel of land on his behalf. Appellee, now retired Judge Clifton J. Gordy, also of the Circuit Court for Baltimore City, granted judgment for the defense. Appellant noted an appeal, and this Court affirmed that decision in an unreported opinion, *Kenneth Johnson v. Elite Professionals 2000, LLC et al.*, No. 0805, September Term 2006 (Md. Ct. Spec. App., Apr. 11, 2007). Seven years later, appellant filed a complaint against appellee in the Circuit Court for Baltimore City. Appellant claimed negligence, abuse of process and fraud stemming from appellee's grant of judgment for the defense in the 2004 matter. Appellant contemporaneously moved to vacate the judgment entered by appellee under Maryland Rule 2-535(b). The case was subsequently transferred to the Circuit Court for Talbot County. That court dismissed appellant's Complaint and denied the Motion to Vacate. Appellant appeals and presents three questions for our review:

I. Did the [c]ircuit [c]ourt err in deciding that [a]ppellee, Judge Clifton Gordy was not required to recuse himself in the trial involving [a]ppellant and his real estate brokers (Long and Foster) on May 24, 2006 that ultimately resulted in [a]ppellant's case being dismissed although there was a conflict of interest or the appearance of a conflict of interest?

II. Did the [c]ircuit [c]ourt err in concluding that [a]ppellant did not establish fraud sufficient to require the judgment entered by [a]ppellee and against [a]ppellant on May 24, 2006 be vacated pursuant to a motion to vacate judgment[?]

III. Did the [c]ircuit [c]ourt err in making factual findings that served as the predicate for its Memorandum Opinion and Order of July 15, 2014, without holding an evidentiary hearing to establish said facts?

For the reasons that follow, we shall affirm the judgment of the circuit court.

FACTUAL BACKGROUND

There are two separate cases initiated by appellant which are relevant to the present dispute. The first is case no. 24-C-05-001094 in the Circuit Court for Baltimore City (hereinafter the "real estate matter"). The second is case no. 20-C-14-008643 in the Circuit Court for Talbot County, which is the case at bar.

I. The underlying real estate matter[1]

In April of 2004, appellant granted the exclusive right to sell a parcel of land he owned in western Maryland to a real estate brokerage firm. The land was subsequently sold for $110,000, but was resold several months later for $225,000. Believing that he was persuaded to sell the property for less than fair market value, appellant filed suit in the Circuit Court for Baltimore City against the firm and several other entities in 2005.

During the course of litigation, appellant repeatedly failed to comply with defense discovery requests, despite an order from the circuit court to do so. As a result of appellant's failure to comply, the circuit court precluded appellant from testifying at trial and from introducing any evidence that should have been provided to the defense.

On May 23, 2006, counsel for appellant appeared before the circuit court (Themelis, J.) for trial. Judge Themelis subsequently recused himself because he had served on the Baltimore City bench with appellant. Later that day, without appellant present, the parties

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[1] The factual background for the underlying real estate matter is derived from this Court's prior unreported opinion in *Kenneth Johnson v. Elite Professionals 2000, LLC et al.*, No. 0805, September Term 2006 (Md. Ct. Spec. App., Apr. 11, 2007).

came before appellee, who was sitting as the postponement judge. Appellee denied a postponement, and agreed to handle the case himself. Appellee directed that the parties report to his courtroom the following day, May 24, 2006, for trial. Appellee advised appellant's counsel that, in light of the discovery sanctions, appellant's counsel should come prepared to make a proffer of the evidence that would be introduced in support of his claims.

On May 24, 2006, appellant's counsel appeared before appellee, again without appellant present. Appellant's counsel was unable to proffer any evidence in support of appellant's claims, and the circuit court, appellee presiding, entered judgment for the defense.

Appellant appealed to this Court, and we affirmed the decision of the circuit court in an unreported opinion, holding that 1) there was no abuse of discretion by the judge who imposed discovery sanctions on appellant, and 2) appellee did not abuse his discretion in granting judgment for the defense.

II. Proceedings in the case at bar

On October 31, 2013, seven years after judgment was granted for the defense in the real estate matter, appellant filed a complaint against appellee in the Circuit Court for Baltimore City, alleging negligence, abuse of process and fraud. According to appellant, appellee had a duty to recuse himself in the real estate matter because appellant had previously represented appellee's ex-wife in her divorce from appellee. Appellant alleged that appellee "held a grudge and hate against [appellant] because [appellant] used evidence

of [appellee's] adulterous relationship in the [appellee's] divorce proceedings." Accordingly, by presiding over the real estate matter, appellee "abandoned his role as a judge and issued a fraudulent judgment against the [appellant] solely because of the [appellee's] ill will towards the [appellant]."

Appellant contemporaneously filed a Motion to Vacate the judgment entered against appellant in the real estate matter under Maryland Rule 2-535(b), which allows the court to modify a judgment at any time in the event of "fraud, mistake or irregularity." According to appellant, the "judgment against [appellant] on or about May 24, 2006, was the product of fraud and was motivated by [appellee's] ill will toward [appellant.]"

Appellee thereafter filed a Motion to Dismiss, or, In the Alternative, for Summary Judgment, and also opposed appellant's Motion to Vacate Judgment. According to appellee, the claims in appellant's complaint were subject to dismissal on the grounds of (1) absolute judicial immunity, (2) the statute of limitations, (3) failure to satisfy the notice provision of the Maryland Tort Claims Act ("MTCA"), (4) personnel immunity under the MTCA, and (5) failure to state a claim upon which relief can be granted. Regarding the motion to vacate, appellee alleged that appellant has failed to establish extrinsic fraud – defined as fraud which "prevent[s] the actual dispute from being submitted to the fact finder at all[]" – a necessary prerequisite for the court to exercise its revisory authority under Md. Rule 2-535(b). Appellee also argued that appellant failed to exercise ordinary diligence in seeking to vacate the judgment by "bringing [the] suit seven years after the judgment was issued[.]" Lastly, appellee contended that appellant waived his allegation of

fraud stemming from appellee's failure to recuse himself, because appellant had neglected to file a motion seeking recusal of appellee when the real estate matter was pending in the circuit court.

On February 3, 2014, the case was transferred to the Circuit Court for Talbot County, and a hearing was held on appellant's Motion to Vacate Judgment and appellee's Motion to Dismiss appellant's Complaint.[2] During this hearing, appellant asserted that he had not waived his argument that appellee should have recused himself, because he was unaware that appellee was the judge who granted judgment for the defense. According to appellant, his attorney had not apprised him of the May 24, 2006 hearing. As a result, appellant did not seek appellee's recusal while the real estate matter was before the circuit court or to seek reconsideration of the court ruling on the grounds of appellee's alleged conflict of interest.

On July 16, 2014, the circuit court issued a Memorandum Opinion and Order denying appellant's Motion to Vacate and granting appellee's Motion to Dismiss. In denying appellant's Motion to Vacate, the court observed that "[f]raud is defined as '[a] knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.'" (quoting BLACK'S LAW DICTIONARY at 685 (8th ed. 2004)). The court noted that, after discovery sanctions were imposed by the circuit court in the real estate matter, appellant's counsel "was unable to proffer any evidence that he was prepared

[2] The circuit court also heard a Motion to Seal the Record, and a Motion for Protective Order, neither of which are relevant to the present appeal.

at that time to present in support of the complaint." (footnote omitted). Accordingly, the court failed to see any misrepresentation of the truth by appellee in dismissing the claim because "it is likely that another judge presented with the same circumstances would have done the same thing as [appellee]."

The circuit court also ruled that appellant's allegation of fraud by appellee was waived. The court observed that, under the law of the case doctrine:

> Once this Court has ruled upon a question properly presented on appeal, or, if the ruling be contrary to a question that could have been raised and argued in that appeal on the then state of the record, as aforesaid, such a ruling becomes the "law of the case" and is binding on the litigants and [courts] alike, unless changed or modified after reargument, and neither the question decided [nor] the ones that could have been raised and decided are available to be raised in a subsequent appeal.

(quoting *Kearney v. Berger*, 416 Md. 628, 641 (2010)). According to the circuit court – while appellant may not have known that appellee was the presiding judge who dismissed the real estate matter within the thirty day window to file a motion for reconsideration[3] – "the [c]ourt finds it hard to believe that during the entire pendency of the appeal to the Court of Special Appeals, [appellant] never knew who the presiding judge was[.]" Thus, the circuit court held that the law of the case doctrine precluded appellant from litigating his allegation of fraud, because appellant could have raised the issue of appellee's recusal on appeal of the real estate matter to this Court seven years prior, but failed to do so.

Regarding the Motion to Dismiss appellant's Complaint, the circuit court noted that "[appellee's] grant of judgment in favor of the Defendants in [the real estate matter] was

[3] *See* Md. Rule 2-535(a).

an action done while performing his judicial functions. Therefore, absolute immunity applies to [appellee].” The court also held that appellant’s claims were barred by (1) the three year statute of limitations, (2) appellant’s failure to provide notice of the claim to the state treasurer as a condition precedent to filing a claim under the MTCA, and (3) the provision of immunity to “[s]tate personnel” under the MTCA, which includes “a judge of a circuit court[.]” Maryland Code (Repl. Vol. 2014), State Government Article, § 12-106(b). Lastly, the court ruled that “the complaint fails to state a claim upon which relief can be granted,” because of the application of absolute judicial immunity.

On July 15, 2015, appellant filed a motion for reconsideration with the circuit court, alleging that “[appellee] was required to recuse himself from the [real estate matter].” In this motion, appellant alleged that appellee violated multiple provisions of the Maryland Code of Judicial Conduct (Maryland Rule 16-813) by failing to recuse himself. According to appellant, appellee was incapable of being impartial in light of appellant’s former representation of appellee’s ex-wife.

Appellant’s motion for reconsideration was denied on August 20, 2014. Thereafter, appellant filed a notice of appeal on August 27, 2014.

Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues presented.

STANDARD OF REVIEW

In reviewing the circuit court decision denying appellant’s Motion to Vacate under Md. Rule 2-535(b), “the only issue before [us] is whether the trial court erred as a matter

of law or abused its discretion in denying the motion." *In re Adoption/Guardianship No. 93321055/CAD,* 344 Md. 458, 475 (1997). "We review a circuit court's determination of whether there was fraud, mistake, or irregularity for clear error and legal correctness." *Davis v. Attorney Gen.*, 187 Md. App. 110, 124 (2009) (quoting *In re: Adoption/Guardianship No. 93321055/CAD,* 344 Md. at 475-76 n. 5 ("noting that, if a court denies a motion to vacate judgment because the 'event or conduct underlying the motion did not constitute cognizable fraud, mistake, or irregularity,' the issue on appeal is 'a purely legal one'")). If the predicate of "fraud, mistake or irregularity" is satisfied, then we review the circuit court's decision to grant or deny the motion to revise for an abuse of discretion. *Pelletier v. Burson*, 213 Md. App. 284, 289 (2013). An abuse of discretion occurs where:

> '[N]o reasonable person would take the view adopted by the [trial] court[ ]' ... or when the court acts 'without reference to any guiding rules or principles.' An abuse of discretion may also be found where the ruling under consideration is 'clearly against the logic and effect of facts and inferences before the court[ ]' ... or when the ruling is 'violative of fact and logic.'

Wilson v. John Crane, Inc., 385 Md. 185, 198 (2005) (quoting *In re Adoption/Guardianship No. 3598,* 347 Md. at 312-13).

DISCUSSION[4]

I. Did the circuit court err in deciding that appellee was not required to recuse himself from the real estate matter?

Appellant first alleges that the circuit court erred in deciding that appellee was not required to recuse himself from the real estate matter.[5] Appellee responds by noting that appellant failed to preserve the recusal issue by neglecting to file a motion requesting recusal of appellee when the real estate matter was in the circuit court. Appellee also contends that the law of the case doctrine properly precluded appellant's recusal argument in the circuit court below, because appellant failed to raise the issue of recusal on appeal of the real estate matter in this Court. Lastly, appellee argues that "even if the issue of recusal had been properly raised, which it was not, [appellee] did not abuse his discretion in hearing [the real estate matter.]" For the reasons that follow, we agree that the law of the case doctrine was properly applied by the circuit court to rule that appellant waived the issue of appellee's recusal.

[4] As noted in the factual background, *supra*, the circuit court dismissed appellant's complaint on the grounds of absolute judicial immunity, state personnel immunity under the MTCA, and the statute of limitations. Appellant does not challenge any of the aforementioned grounds for dismissal in his brief to this Court.

[5] Appellant relies exclusively on various sections of Maryland Rule 16-813, referred to as the Maryland Code of Judicial Conduct, to argue that that appellee acted unethically by failing to recuse himself from the real estate matter. Appellee, however, correctly responds by noting that "the Maryland Code of Judicial Conduct 'is not designed or intended as a basis for civil or criminal liability. It is also not intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before the court.'" (quoting Md. Rule 16-813.A107).

The law of the case doctrine has been summarized by the Court of Appeals as follows:

> Once this Court has ruled upon a question properly presented on appeal, or, if the ruling be contrary to a question that could have been raised and argued in that appeal on the then state of the record, as aforesaid, such a ruling becomes the "law of the case" and is binding on the litigants and courts alike, unless changed or modified after reargument, and neither the question decided nor the ones that could have been raised and decided are available to be raised in a subsequent appeal. (citations omitted).

Tu v. State, 336 Md. 406, 434 (1994) (quoting *Loveday v. State,* 296 Md. 226, 229 (1983)). Under this doctrine, a party is not only precluded from raising the issue in a subsequent appeal, but litigation of the issue in the lower courts is precluded "provided that the facts and the evidence in the later proceedings are substantially similar to those in the original trial." *Maryland-Nat'l Capital Park & Planning Comm'n v. Anderson*, 179 Md. App. 613, 625 (2008) (citation omitted). The Court has noted this doctrine is designed to prevent "piecemeal trial of cases," where a litigant attempts to take a "second bite of the apple, [because] due to his or her own negligence or incompetence, the first one was insufficient." *Tu*, 336 Md. at 434.

Under a straightforward application of the law of the case doctrine, appellant was precluded from litigating the claim. In the underlying real estate matter, appellant failed to seek recusal of appellee in the circuit court, and also failed to raise the issue of recusal in his appeal to this Court. Furthermore, all facts used to support the claim that appellee should have recused himself – *i.e.* that appellant had represented appellee's ex-wife in her divorce from appellee – were known by appellant during the pendency of the real estate

matter. Accordingly, when appellant failed to raise the issue of appellee's recusal on appeal of the real estate matter to this Court in 2006, further litigation was precluded by the law of the case doctrine.

In an attempt to avoid the preclusive effect of the law of the case doctrine, appellant argues that he was unaware that appellee presided over the real estate matter because his counsel failed to advise him of the hearing that was scheduled for May 24, 2006. As a result, appellant did not seek appellee's recusal, and appellant's counsel also failed to make a record of the recusal issue for this Court to review on appeal of the real estate matter.

Assuming, *arguendo*, that appellant's counsel failed to apprise him of the May 24, 2006 hearing, we are nonetheless persuaded that our previous opinion in the real estate matter is the law of the case on the issue of appellee's recusal. Appellant was bound by the knowledge/actions of his attorney in the real estate matter, *see Bland v. Hammond*, 177 Md. App. 340, 358 (2007) ("[E]ach party is deemed bound by the acts of his lawyer-agent and considered to have notice of all facts, notice of which can be charged upon the attorney.") (quoting *Link v. Wabash R. Co.,* 370 U.S. 626, 633-34 (1962)), and appellant conceded this point during argument on the Motion to Vacate in the circuit court. ("I agree, Your Honor, with respect to the fact that you are bound by your agent, you are bound by your lawyer that you retain. No dispute with respect to that."). Therefore, appellant was presumed to know that appellee presided at the May 24, 2006 hearing, because his counsel obtained this knowledge when attending that hearing. Additionally, when appellant's counsel neglected to seek appellee's recusal in the circuit court, appellant became bound

by his counsel's failure to preserve that issue for review by this Court. *See, e.g. Traverso v. State*, 83 Md. App. 389, 394 (1990) (holding that "no issue concerning recusal has been preserved for our review" where appellant "never asked the trial judge to recuse himself.") (citation omitted); *Conwell Law LLC v. Tung*, 221 Md. App. 481, 516 (2015) ("To initiate recusal procedures and preserve the recusal issue for appeal, 'a party must file a timely motion' with the trial judge that the party seeks to recuse.") (citation omitted).

As we previously observed, the law of the case doctrine is designed to prevent litigants from attempting to take a "second bite of the apple, [because] due to his or her own negligence or incompetence, the first one was insufficient." *Tu*, 336 Md. at 435. If appellant's counsel in the real estate matter was negligent in failing to raise the issue of recusal at the circuit court and on appeal, that negligence is attributed to the appellant. As such, appellant cannot now allege that he is entitled to litigate the issue of recusal because his counsel's arguably negligent actions kept that issue from our review during his "first bite at the apple." Instead, as aptly noted by the circuit court during argument on appellant's Motion to Vacate, to the extent that appellant was prejudiced by his counsel's failure to apprise him of the May 24, 2006 hearing, the proper course of action would be a legal malpractice claim against his prior counsel.[6]

[6] During oral argument on appellant's motion to vacate, appellant's counsel indicated that appellant had in fact brought suit against his counsel in the real estate matter for failing to advise him of the May 24, 2006 hearing: "Edward Smith [(appellant's counsel in the real estate matter)] didn't advise my client of the hearing date which resulted in another lawsuit, Your Honor, that involved Edward Smith and the settlement involving that

(continued . . .)

For the aforementioned reasons, we hold that the circuit court did not err in applying the law of the case doctrine to rule that appellant was precluded from arguing that appellee was required to recuse himself from the real estate matter.

II. Did the circuit court err in concluding that appellant had failed to demonstrate fraud – a necessary predicate to revision of an enrolled judgment under Maryland Rule 2-535(b)?

Appellant next argues that "there was evidence sufficient to require the circuit court to order an evidentiary hearing to establish whether [a]ppellant ha[d] sufficient evidence of fraud to justify vacating the judgment of May 24, 2006." We disagree, and hold that the circuit court correctly found that appellant had failed to demonstrate the type of fraud necessary to modify an enrolled judgment under Maryland Rule 2-535(b).[7]

In moving to vacate the judgment entered in the real estate matter, appellant bore the burden of demonstrating "extrinsic fraud." *Bland v. Hammond*, 177 Md. App. 340, 351 (2007) ("Only extrinsic fraud will justify the reopening of an enrolled judgment; fraud

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(. . . continued)
particular matter." Based on this representation, the circuit court made the following observation:

> Why isn't the answer then, all right then Mr. Smith's responsible for all of this and you have a remedy to go against Mr. Smith. You can allege legal malpractice and seek the same damages that you thought you could get or would have been able to get otherwise. And in fact apparently that's what happened. Your client did in fact go after Mr. Smith and as you told me made a claim and settled the claim, so, why isn't that the answer if he thought that he shouldn't be bound by, that it was unfair of him to bound that he could go after Mr. Smith.

[7] A judgment becomes enrolled thirty days after its entry. *Thacker v. Hale*, 146 Md. App. 203, 216 (2002).

which is intrinsic to the trial itself will not suffice."). As noted by the circuit court, and confirmed by subsequent appellate decisions, fraud is generally understood as a "knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment." BLACK'S LAW DICTIONARY 712 (10th ed. 2014); *see generally Schnader v. Brooks*, 150 Md. 52 (1926) (discussing the concept of fraud in Maryland). To demonstrate *extrinsic* fraud, a movant must show more than just a misrepresentation or concealment of material fact that "'operated to cause the trier of fact to reach an unjust conclusion.'" *Bland*, 177 Md. App. at 351 (quoting *Hresko v. Hresko,* 83 Md. App. 228, 232 (1990)). Instead, the movant must show that the "'the fraud prevented the actual dispute from being submitted to the fact finder at all.'" *Id.*

In the case at bar, appellant was unable to demonstrate extrinsic fraud because appellee's decision to grant judgment for the defense in the real estate matter was the only logical decision to be reached in light of the discovery sanctions imposed by the circuit court. After discovery sanctions were imposed, appellant's counsel appeared before the circuit court, appellee presiding, and admitted that appellant was unable to proffer a single piece of evidence that was not barred by the discovery sanction. As we previously noted in our decision on appeal of the real estate matter, "judgment for appellees was the logical result of appellant's inability to present evidence in support of his claim." Thus, assuming, *arguendo*, that appellee did in fact have animus towards appellant stemming from his representation of appellee's ex-wife, appellant would be unable to show that appellee's decision was the product of that animus, and was therefore fraudulent.

Furthermore, appellant is unable to demonstrate extrinsic fraud on the part of appellee because the discovery sanction, not appellee's decision, prevented appellant from presenting his case to the fact finder. *See Bland*, 177 Md. App. at 351 (noting that fraud is extrinsic where "'the fraud prevented the actual dispute from being submitted to the fact finder at all.'"). We therefore hold that the circuit court was correct to rule that appellant had failed to demonstrate the prerequisite fraud to modify a registered judgment under Md. Rule 2-535(b) where "another judge presented with the same circumstances would have done the same thing as [appellee]."

III. Did the circuit court err in making factual findings that served as the predicate for its Memorandum Opinion and Order of July 15, 2014 without holding an evidentiary hearing to establish said facts?

According to appellant, the circuit court erred by making the following two findings: (1) "it is likely that another judge presented with the same circumstances would have done the same thing as [appellee];" and (2) "[t]he [c]ourt finds it hard to believe that during the entire pendency of the appeal to [this Court, appellant] never knew who the presiding judge was and that is why he just raised the issue of recusal some eight years later." According to appellant, the above factual findings were improper without an evidentiary hearing.[8] We discuss each of the factual findings challenged by appellant in turn, and hold that no error was committed.

[8] Appellant also alleges that the circuit court erred by beginning its Memorandum Opinion and Order with the phrase "having considered the testimony," because "there was no evidentiary hearing …." Appellant may be correct that the Court's use of the word "testimony" was erroneous, but it is unclear how such an error would have prejudiced appellant so as to warrant our review on appeal.

Appellant's first argument, that "[t]here is not support for [the circuit court's] speculation" that "another judge presented with the same circumstances would have done the same thing as [appellee,]" is without merit. Where a plaintiff is unable to make a *prima facie* case (*i.e.* the presentation of evidence from which the factfinder could return a favorable verdict), judgment in favor of the defense should follow. *Cf. Logan v. LSP Mktg. Corp.*, 196 Md. App. 684, 704 (2010) ("Because [the plaintiff] conceded that he could not 'present a *prima facie* case,' we conclude that the court did not err in finding that … there exists no dispute as to material fact and Summary Judgment is appropriate as to all claims asserted against all [d]efendants."). As such, the circuit court was not engaged in speculation when it noted that another judge would have also entered judgment in favor of the defense where appellant had failed to proffer any evidence in support of his claims in the real estate matter.

Regarding the circuit court's finding that "it [is] hard to believe that during the entire pendency of the appeal to [this Court, appellant] never knew who the presiding judge was…[,]" appellant argues that the circuit court "is speculating and there was no evidentiary hearing to adjudge the sincerity of appellant's position." However, in the circuit court below, appellant never alleged that he was unaware that appellee presided over the real estate matter during the pendency of that case in this Court. Instead, appellant contended that he did not become aware that appellant had presided over the real estate

matter "until later on," but never clarified when this was – thus leaving the circuit court to speculate.[9]

Lastly, any error committed by the circuit court in allegedly speculating about when appellant became aware of appellee's involvement in the real estate matter was harmless. A complaining party must show both error and prejudice to prevail on appeal:

> Prejudice will be found if a showing is made that the error was likely to have affected the verdict below. 'It is not the possibility, but the probability, of prejudice which is the object of the appellate inquiry.' … Substantial prejudice must be shown. To justify the reversal, an error below must have been '... both manifestly wrong and substantially injurious.'

[9] Were the circuit court to accept that appellant did not become aware of appellee's involvement until after this Court rendered its decision in the real estate matter, dismissal of appellant's claim would still be required. We have previously clarified that "[t]he power of the circuit court to revise a final judgment which has been entered for more than thirty days requires, in addition to fraud, mistake, irregularity or clerical error, 'that the person seeking the revision acts with ordinary diligence and in good faith upon a meritorious cause of action or defense.'" *J.T. Masonry Co. v. Oxford Const. Servs., Inc.*, 314 Md. 498, 506 (1989) (citation omitted). In *Bland v. Hammond*, 177 Md. App. 340, 357-58 (2007), we held that a plaintiff's motion to vacate was properly dismissed for lack of ordinary diligence, where negligence of the plaintiff's counsel had resulted in dismissal of the plaintiff's claim. In *Bland*, the plaintiff's motion to vacate was filed almost three years after entry of judgment against the plaintiff, because the plaintiff had only independently sought information concerning the status of her case when she had been unable to communicate with her counsel for six years. *Id.* at 358. We noted that plaintiff's failure to inquire about the status of her case earlier fell short of ordinary diligence, and also fell short of her duty to keep herself informed as to what was occurring in the case. *Id.* (citation omitted).

The case at bar is similar to *Bland*, in that independent inquiry at any time after 2006 would have revealed the grounds for the present Motion to Vacate the judgment entered in the real estate matter. However, it was only in 2013, seven years after that judgment, that appellant actually filed his motion to vacate on the grounds that appellee had a conflict of interest. In light of this delay, appellant did not act with ordinary diligence in filing his motion to vacate.

Flanagan v. Flanagan, 181 Md. App. 492, 515-16 (2008) (quoting *Crane v. Dunn*, 382 Md. 83, 91-92 (2004)).

In the case at bar, the circuit court's finding that "it [is] hard to believe that during the entire pendency of the appeal to [this Court, appellant] never knew who the presiding judge was…[,]" was only relevant to the circuit court's ruling regarding waiver. The circuit court's ruling that appellant had failed to demonstrate the predicate fraud to vacate the real estate matter judgment is unaffected by this contested finding. *See* Part II, *supra*. Accordingly, were we to hold that the circuit court erroneously speculated about when appellant became aware of appellee's involvement in the real estate matter, the lower court ruling would remain unchanged. Therefore, any error committed was harmless.

IV. **Absolute Judicial Immunity**

Although the issue of judicial immunity is not discussed in appellant's brief, the circuit court dismissed appellant's complaint after finding that his claims were barred by absolute judicial immunity. Appellee, in his brief to this Court, also correctly notes that absolute judicial immunity bars any suit stemming from his ruling in the real estate matter.

In *D'Aoust v. Diamond*, 424 Md. 549, 598 (2012), the Court of Appeals noted that "the appropriate test for determining whether an individual is entitled to receive the benefit of absolute judicial immunity for certain functions is whether: (1) the act performed was by a judicial officer; and (2) the act was a judicial act." As noted by appellee, judicial immunity applies "'regardless of the nature of the tort[,]'" *id.* at 595, and is only lost where

a judge "knowingly acts in the 'clear absence of jurisdiction[.]'" *Id.* at 599 (quoting *Parker v. State*, 337 Md. 271, 282-85 (1995)).

As indicated by appellant's argument on appellee's Motion to Dismiss, he does not dispute that appellee was a judicial officer performing a judicial act when he granted judgment in the real estate matter. Instead, appellant alleges that judicial immunity should not apply in the event of fraud. This contention is unsupported by case law, which explicitly provides that judicial immunity is unaffected by the nature of the tort alleged. *Id.* at 595. Accordingly, the circuit court correctly found that appellant's claims for negligence, abuse of process, and fraud were barred by judicial immunity.

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