

Circuit Court for Anne Arundel County  
Case No. 02-C-13-184136

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1947

September Term, 2024

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JOSEPH NEIL

v.

AMANDA WATROBA

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Reed,  
Shaw,  
Eyler, James R.,  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Reed, J.

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Filed: April 27, 2026

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In 2024, Joseph Neil (“Appellant”) filed—in the Circuit Court for Anne Arundel County—a motion to vacate a 2014 default judgment that adjudicated him the father of a child born to Amanda Watroba (“Appellee”) and ordered him to pay child support. Appellee opposed the motion and moved for fees under Rule 1-341. The circuit court held a hearing, denied the motion, found that Appellant maintained the proceeding without substantial justification, and awarded Appellee attorneys’ fees. Appellant now appeals, presenting five questions,<sup>1</sup> which we combine and rephrase as two:

- I. Did the circuit court err or abuse its discretion by denying the motion to vacate?
- II. Did the circuit court err or abuse its discretion by awarding Appellee attorneys’ fees?

For the following reasons, we answer “No” to these questions and affirm the judgment of the circuit court.

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<sup>1</sup> The questions as posed by Appellant verbatim are:

1. Did the Circuit Court error by failing to hear all evidence relevant to the Motion to Vacate?
2. Did the Circuit Court error by determining that Mr. Neil could not “be an ostrich in the sand”?
3. Did the Circuit Court error by determining that inconsistent affidavits of service are by law more reliable?
4. Did the Circuit Court error by determining that inconsistent affidavits of service are to be taken at face value for service verification but for no other description or purpose?
5. Did the Circuit Court error by awarding attorneys’ fees?

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **The 2014 Judgment**

On December 13, 2013, Appellee, through counsel, filed a complaint for custody and related relief in the circuit court. She provided an address for Appellant in Chevy Chase, Maryland. She alleged that she and Appellant were the parents of a daughter, B, born that same month. Since her birth, B had lived with Appellee. Appellant had “expressed no interest in the minor child” and had “ignore[d] [Appellee’s] pregnancy.” Appellee asked the court to award her sole legal and physical custody of B, order Appellant to pay child support, and award attorneys’ fees.

On January 30, 2014, a private process server filed a return of service averring that she personally served Appellant on January 14, 2014, at his place of employment, located at 100 White Marsh Park Drive, Bowie, Maryland. The person served was a Black male, approximately 30 years old, who was 6’1” tall and weighed approximately 225 pounds. Appellant did not file an answer.

On May 14, 2014, Appellee filed a request for an order of default against Appellant. The court entered an order of default five days later.

On July 21, 2014, the same private process server averred that she personally served Appellant with the trial subpoena for the default hearing at his home in Chevy Chase, Maryland. Her affidavit of service described the person served as a Black male, 5’9” tall, weighing 190 pounds.

On July 25, 2014, a family law magistrate held a default hearing which Appellee attended with counsel, and Appellant did not attend. The magistrate heard testimony and

admitted evidence bearing upon paternity, the parties' income, and custody and made the several pertinent findings, including that the parties were in a relationship for 2 months, ending March 13, 2013. Notably, the magistrate further found, based upon Appellee's testimony "as to the parties' relationship and her testimony that she was not with anyone else when the child was conceived," that Appellant was B's father.

Appellee was employed, earning \$2,025 per month, and incurred monthly expenses totaling \$541.67 for daycare and \$62.90 for B's health insurance. Appellant was a personal trainer and owned two businesses serving individuals and corporate clients, including Comcast, Pepco, Kaiser Permanente, and Sunrise Senior Living. He maintained two apartments—one in Largo, Maryland and one in Chevy Chase, Maryland—and owned 4 cars. Based upon financial and business records and expert testimony from a witness in the field of personal and corporate wellness, the court found Appellant earned \$100,000 annually.

The magistrate recommended that sole custody be awarded to Appellee; that Appellant be adjudicated B's father; and that he be ordered to pay \$1,569 per month in child support. The magistrate further recommended an award of \$4,000 in attorneys' fees. The court entered a default judgment consistent with those findings on September 4, 2014 ("the 2014 Judgment"). No appeal was taken from that judgment.

### **The Motion to Vacate**

Nearly a decade later, on March 6, 2024, Appellant filed a verified motion to revise and vacate the 2014 Judgment under Rule 2-535(b), which empowers the court to "exercise

revisory power and control over [a] judgment [at any time] in case of fraud, mistake, or irregularity.” The basis for his motion was a defective service.

Appellant asserted that discrepancies in the physical description of him on the return of service for writ of summons and that the trial summons supported his position that he was not served with either. He alleged that in 2014 he was 5’9” tall and weighed 185 pounds. In contrast, the January 14, 2014, affidavit of service described him as 6’1” and 225 pounds. The return of service also stated he had been served at his place of employment, but he alleged the address where he was alleged to have been served was a Sport Fit gym and that he never was employed by that business. He also denied having been served with the trial subpoena for the default hearing, which provided a description more consistent with his physical attributes.

Had he been served, Appellant asserted he would have contested paternity and would have contested the evidence of his income, which he alleged was much lower than the income found by the court.<sup>2</sup> He asserted that he and Appellee met while she was employed at the mall, that she was seeing multiple men at that time, that they had one sexual encounter, and that they never spoke again after that day.

Appellee opposed the motion to vacate and requested an award of attorneys’ fees under Rule 1-341. She asserted that Appellant worked with clients at the Sport Fit gym where he was served. She attached to her opposition evidence that in 2020, Appellant was aware of B, spent time with her, pressured Appellee to “cancel” the child support case, and

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<sup>2</sup> Appellant alleged that his income was determined to be just \$25,980 in a child support case in Prince George’s County around the same time.

told B he would be able to spend more time with her if he and Appellee were able to “sort out” the child support matter.

### **The Evidentiary Hearing**

On August 19, 2024, the circuit court held a consolidated hearing on Appellant’s motion to vacate and Appellee’s request for fees. The court directed the parties to first present evidence on the issue of whether Appellant was served in 2014.

Appellant testified that when he had been involved in court cases in the past, he had been served with a subpoena by the sheriff directing him to appear in court on a particular day. He said he learned about the child support order in this case when he appeared in the Circuit Court for Prince George’s County relative to a different child support case and learned that a portion of his payments in the Prince George’s County case were being diverted to pay the child support arrears in this case.

He testified that he did not have contact with Appellee between 2013 and 2020, when she reached out to his mother. He then met with Appellee and B, along with his mother. Appellee informed him at that time that she had filed a child support case against him. Appellee told Appellant that she would “end it.”

He testified that in 2013 and 2014, he taught classes once or twice a week at the Sport Fit gym in Bowie, but never was employed directly by the business. He was part of a group called “Men of Zumba” and hosted Zumba parties at that location.

He was shown pictures of himself from social media in that time frame and acknowledged that because he is a body builder, his “weight is deceptive.” He claimed that he did not remember where he was living in July 2014 when the trial subpoena was served

but acknowledged having lived at the Chevy Chase address at some point. He also acknowledged that he did not appear in court for another child support case despite having been served, resulting in a body attachment being issued for him.

Appellee testified that she only spoke to Appellant once during her pregnancy—when she ran into him at the gym when she was 11 weeks pregnant. She did not contact him during the pendency of her child custody and child support case, instead letting her attorney handle all communications.

Appellee’s counsel moved for judgment, arguing that Appellant was not credible in his assertion that he was not served in 2014.

Appellant’s counsel responded that the discrepancy between the descriptions of the person served in the first affidavit of service and the second affidavit of service was evidence that Appellant was not served. Counsel emphasized that it was the same process server and that there was no evidence that Appellant’s height or weight changed in the interim.

Counsel for Appellee replied that individuals dress differently when they are at the gym and when they are at home, which could explain the process server’s different estimates of Appellant’s weight. Given Appellant’s testimony that his weight can be “deceptive,” the weight discrepancy, standing alone, was not evidence that he was not served. The 4-inch height discrepancy, in counsel’s view, was a “non-issue.”

### **The Court’s Ruling**

The court ruled in favor of Appellee. It explained that there was a “presumption of regularity” when a return of service is filed. The process server stated that she served

Appellant, personally, at two different locations. The evidence established that the first location—a Sports Fit gym in Bowie— was a place he taught classes in 2014 and the second location—an apartment in Chevy Chase—was a place he had lived, though he could not remember the dates of his residency there. The court reasoned that Appellant would “have to be one of the unluckiest persons in the world if at two different times” a process server mistakenly served someone other than him and that person accepted service on his behalf.

The court did not credit Appellant’s testimony. It emphasized that Appellant claimed not to know about the child support case until 2023 despite having discussed it with Appellee in 2020. The court reasoned that the discrepancies between the physical descriptions of the person served in the affidavits of service were “within the standard deviation[.]” The disparity between the descriptions also supported an inference, in the court’s view, that an individual was not intentionally impersonating Appellant. The court found Appellant had “not come close to meeting [his] burden of proof that ... was fraud, mistake or irregularity[.]” and denied the motion to vacate with prejudice.

The court then turned to the request for attorneys’ fees. Appellee testified briefly about the fees paid to her attorney to defend against the motion to vacate. The court ruled that Appellant filed his motion to vacate without substantial justification and awarded Appellee all her fees.

On November 6, 2024, the court entered an order to this effect. This timely appeal followed.

## DISCUSSION

### I.

Ordinarily, this Court reviews a “circuit court’s decision whether to grant a motion to revise a judgment pursuant to Rule 2-535(b) under an abuse of discretion standard.” *Peay v. Barnett*, 236 Md. App. 306, 315 (2018). “The existence of a factual predicate of fraud, mistake, or irregularity, necessary to support vacating a judgment under Rule 2-535(b), is a question of law.” *Wells v. Wells*, 168 Md. App. 382, 394 (2006). “If the factual predicate exists, the court’s decision on the motion is reviewed[,]” *see, id.*, to determine “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).

The terms “fraud, mistake, or irregularity” as used in Rule 2-535(b) are “narrowly defined and strictly applied . . . in order to ensure finality of judgments.” *Pelletier v. Burson*, 213 Md. App. 284, 290 (2013) (quoting *Thacker v. Hale*, 146 Md. App. 203, 217 (2002)). A mistake “refers only to a ‘jurisdictional mistake.’” *Peay*, 236 Md. App. at 322 (citing *Chapman v. Kamara*, 356 Md. 426, 436 (1999)) (further citation omitted). A jurisdictional mistake typically 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.” *Chapman*, 356 Md. at 436 (internal citation and quotation marks omitted).

In this case, Appellant asserted he was not served with process. “The determination [of] ‘[w]hether a person has been served with process is essentially a question of fact.’” *Wilson v. Md. Dep’t of Env’t*, 217 Md. App. 271, 286 (2014) (quoting *Harris v. Womack*, 75 Md. App. 580, 585 (1988)). A return of service filed with the court is *prima facie*

evidence of proper service that, if unrebutted, is sufficient grounds for exercising personal jurisdiction over the person served. Maryland courts recognize that “a proper official return of service is presumed to be true and accurate until the presumption is overcome[.]” *Weinreich v. Walker*, 236 Md. 290, 296 (1964).

Significantly, “the mere denial of personal service by him who was summoned will not avail to defeat the sworn return of the official process server.” *Id.*; *see Wilson*, 217 Md. App. at 285 (stating that “a mere denial of service is not sufficient” to overcome “the presumption of validity” arising from a return of service). When a denial of service “is not supported by corroborative testimony or circumstances . . . the attempted impeachment of the official return must fail.” *Weinreich*, 236 Md. at 296 (quoting *Weisman v. Davitz*, 174 Md. 447, 451 (1938)). Consequently, “the return of service of process is presumed to be true and accurate and a mere denial by a defendant, unsupported by corroborative evidence or circumstances, is not enough to impeach the return of the official process server[.]” *Ashe v. Spears*, 263 Md. 622, 627-28 (1971).

Here, the record contains a facially valid return of service showing that Appellant was personally served by hand-delivery on January 14, 2014, at 8:20 p.m., at a Sport Fit gym in Bowie. The only evidence presented to rebut the presumption of regularity was that Appellant was not “employed” by the Sport Fit gym and that the process server described him as 4 inches taller and 40 pounds heavier than he testified that he was at that time.<sup>3</sup> The

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<sup>3</sup> We note that Appellant did not corroborate this with proof of his height or weight, such as his driver’s license.

evidence established, however, that Appellant taught classes at the Sport Fit gym and that, by his own admission, his weight was “deceptive” because he was extremely muscular. The court reasoned that the difference in the descriptions of Appellant’s physical features in the affidavit of service filed for the original complaint and the affidavit of service filed for the trial summons did not support a finding that two different people were served, but rather reflected normal deviations in perception of height and weight by the process server.<sup>4</sup> The court also noted that the discrepancies militated against any suggestion that the same individual was impersonating Appellant to commit fraud on the court or that the process server falsified the returns.

Appellant contends the court failed to consider the “obvious” possibility that the process server made a mistake and served the wrong person at the gym. It was Appellant’s burden, however, to overcome the presumption that service was made. He presented no evidence to show he was not present at the Sport Fit gym on January 14, 2014, or to show

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<sup>4</sup> Appellant argues in his brief that Rule 2-121 requires a description of the person served and, consequently, that the description should be entitled to great weight. He is mistaken.

Rule 2-126 governs the return of service. It requires that the process server include “a description of the individual served and the facts upon which the individual making service concluded that the individual served is of suitable age and discretion” *only* if service is made under Rule 2-121(a)(2). Md. Rule 2-126(a)(1). Rule 2-121(a)(2) applies when a process server leaves “a copy of the summons, complaint, and all other papers filed with it *at the individual’s dwelling house or usual place of abode with a resident of suitable age and discretion.*” (Emphasis added.) That is not what occurred here. The process server served Appellant directly by hand delivery. Under those circumstances, the return of service was required to include “the name of the person served, the date, and the particular place and manner of service.” Md. Rule 2-126(a)(1).

that an individual other than him mistakenly accepted service on his behalf. Absent such evidence, his speculation does not amount to corroborative evidence. On this record, the court did not err or abuse its discretion by concluding that Appellant failed to rebut the presumption that he was served.

Having concluded Appellant did not make a threshold showing of mistake under Rule 2-535(b), the court did not need to reach the issue of whether Appellant had a meritorious defense to the complaint. Likewise, the court was not required to address waiver. Appellant draws upon a two-part test for waiver from our decision in *Peay*, 236 Md. App. at 330-31.

In *Peay*, the circuit court found the defendant had not been properly served because a process server left the summons and complaint at the defendant's apartment with the defendant's sister, who did not reside in the apartment. *Id.* at 323. The circuit court nevertheless ruled that the defendant failed to diligently move to set aside the default judgment and denied her motion to vacate it. *Id.* at 323-24. On appeal, we held that where a defect in service of process occurs, the "diligence and good faith test" is inapplicable, and thus, the circuit court erred by denying the motion to vacate on that basis. *Id.* at 324. We nevertheless remanded the case to the circuit court for a determination of whether the defendant implicitly waived her right to object to the trial court's personal jurisdiction over her. *Id.* at 327-331.

*Here*, in contrast, because the court concluded there was no defect in service and denied the motion to vacate, there was no need for the court to consider if denial was also

appropriate on the alternative ground that Appellant’s subsequent conduct amounted to an implicit waiver of his right to object to the court’s personal jurisdiction over him.<sup>5</sup>

## II.

Maryland Rule 1-341 sets forth “the remedial authority of the court in any civil action to require a party to pay an opposing party’s attorney’s fees for unjustified proceedings.” *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 18 (2018). It states:

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification, the court, on motion by an adverse party, may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorneys’ fees, incurred by the adverse party in opposing it.

Md. Rule 1-341(a). Before awarding attorneys’ fees, the circuit court must make two findings: “(1) that the party’s conduct during a proceeding was without substantial justification or done in bad faith; and (2) that the party’s action warrants the assessment of fees.” *Charles v. Charles*, 265 Md. App. 631, 658 (2025) (citing *Christian*, 459 Md. at 20-21). “We review the first finding for clear error or error in the application of the law.” *Id.* “We then apply an abuse of discretion standard to the second finding that the party’s bad faith or lack of substantial justification warranted a grant of attorneys’ fees.” *Id.*

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<sup>5</sup> To the extent that the circuit court’s comments that Appellant could “not be an ostrich in the sand” reflected consideration of implicit waiver, it was unnecessary to the court’s ruling.

In her motion for fees, Appellee asserted that Appellant made demonstrably false allegations in his motion to vacate, including stating he had no knowledge of B’s birth until 2023, that he had no knowledge of the child support case until 2023, and that he had not spoken to Appellee since 2013. The evidence at the hearing further established that Appellant’s allegation that he never was employed by the Sports Fit gym was, at best, disingenuous as the evidence established he taught classes at that gym in 2014.

The trial court ruled the motion was “specious” because beyond the mere denial that he was served, Appellant produced no evidence to satisfy his burden to impeach the return of service. Concluding the case represented a quintessential unjustified proceeding, it determined to award Appellee all her fees.

Appellant contends this was error for two reasons. *First*, he contends there was no evidence of bad faith on Appellant’s part. *Second*, he argues that because the court failed to permit him to fully present his case demonstrating his meritorious defense to the income determination in the child support calculation, it denied him the opportunity to show good faith.

The short answer to Appellant’s contentions is that the trial court based its ruling on lack of substantial justification, not bad faith. Because there was competent and material evidence in the record to support the trial court’s finding that Appellant was unjustified in moving to vacate the judgment based on nothing more than a discrepancy in the physical description of him in the affidavit of service, the court’s finding was not clearly erroneous. The court also did not abuse its broad discretion by determining that an award of fees was justified.

— Unreported Opinion —

**JUDGMENT OF THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**