

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0322

September Term, 2015

MARLENA JAREAUX

v.

GAIL R. PROCTOR, ET AL.

Woodward,
Friedman,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: July 19, 2016

*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.

The instant litigation is between Marlena Jareaux, appellant, and Gail Proctor, appellee, the two sole members of Proceaux Properties, LLC (“the Company”). In a derivative suit on behalf of the Company, Proctor sued Jareaux for breach of contract, tortious interference, breach of fiduciary duty, and unjust enrichment in the Circuit Court for Howard County. After a bench trial, the court issued an order awarding judgment for Proctor “on behalf of” the Company in the amount of \$49,942.00, and such order was duly entered on the docket. However, the Notice of Recorded Judgment, issued by the clerk, states: “Judgment in Favor of: Proctor, Gail R.”

Over five months after the entry of the circuit court’s judgment and the clerk’s issuance of the Notice of Recorded Judgment, Jareaux filed a motion to correct clerical error in the judgment, and, over eighteen months after that, a motion to vacate, on the grounds that (1) the circuit court did not have subject matter jurisdiction over the instant case, because Proctor lost her standing to prosecute a derivative claim on behalf of the Company prior to the entry of judgment, and (2) the Notice of Recorded Judgment must contain a statement that the judgment entered in favor of Proctor was on behalf of the Company. The court denied both of Jareaux’s motions.

On appeal to this Court, Jareaux raises two questions for our review, which we have rephrased as follows:¹

¹ Jareaux’s questions, as presented in her brief, are as follows:

1. Did the circuit court exceed its authority by failing to acknowledge the jurisdiction of the Bankruptcy Court

(continued...)

1. Did the trial court have subject matter jurisdiction over Proctor’s complaint?
2. Was it clerical error for the Notice of Recorded Judgment to list the judgment entered solely in favor of Proctor?

For reasons set forth herein, we answer the first question in the affirmative and the second question in the negative. Accordingly, we shall affirm the judgment of the circuit court.

BACKGROUND

This litigation took place over a period of five years and produced an extensive docket; the relevant procedural history is as follows. On March 2, 2011, Proctor filed her complaint² in the circuit court on behalf of the Company. The complaint alleged that Jareaux (1) engaged in willful and gross negligence as President of the Company, (2) breached her contract with the Company as managing member, (3) was unjustly enriched by the Company, (4) tortiously interfered with the Company, and (5) breached her fiduciary duty by engaging

¹(...continued)

regarding a Maryland limited liability company member’s economic and non-economic interests?

2. Did the trial judge make a discretionary ruling in denying the Motion to Correct Clerical Error in Judgment aspect of Appellant’s Motion to Reconsider (thereby upholding the clerical error), and if so, did he abuse his discretion?

² Proctor filed an amended complaint on May 20, 2011, a second amended complaint on November 23, 2011, and a third amended complaint on March 16, 2012. All further references to Proctor’s complaint will be to the third amended complaint.

in fraud. On March 12, 2012, Proctor filed a voluntary petition for bankruptcy under Chapter 13 of the Bankruptcy Code. That case was dismissed sometime after 2012.

The circuit court held a bench trial on August 6 through 8, 2012, and found in favor of Proctor in the amount of \$49,942.00. In its order dated and entered on August 27, 2012, the court granted judgment “in favor of [Proctor] on behalf of [the Company] in the amount of \$49,942.00,” and enjoined Jareaux “from any further activities” regarding the Company, including “any action to thwart efforts [] Proctor might make to salvage [the Company’s] fortunes or to be in a position to pay off debts of the [Company].” On August 28, 2012, the clerk issued a Notice of Recorded Judgment, noting, among other things, “Judgment in Favor of: Proctor, Gail R.”

On September 6, 2012, Jareaux filed a Motion to Reconsider and Alter/Amend Judgment and a Motion for a New Trial, which was denied on February 13, 2013. On March 15, 2013, Jareaux filed a notice of appeal to this Court, but we *sua sponte* dismissed the appeal on September 13, 2013, after Jareaux did not pursue the appeal.

On February 6, 2013, Jareaux filed a Motion to Correct Clerical Error in Judgment and in the Electronic Maryland Judiciary Case Record (“motion to correct clerical error”). Over eighteen months later, on September 23, 2014, Jareaux filed a Motion to Vacate Enrolled Judgment and Motion for Hearing on Motion to Correct Clerical Error (“motion to vacate”). After a hearing on January 5, 2015, the circuit court denied both of Jareaux’s motions. The court entered its order denying Jareaux’s motions on January 9, 2015. On

January 20, 2015, Jareaux filed a motion to reconsider, which was denied on March 19, 2015. On April 20, 2015, Jareaux filed a timely notice of appeal.

STANDARD OF REVIEW

Because both the motion to correct clerical error and the motion to vacate were filed more than thirty days after the circuit court entered its order on August 27, 2012, these motions are governed by Maryland Rule 2-535(b). That rule provides: “On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.” Md. Rule 2-535(b).

This Court explained our scope of review of Rule 2-535(b) motions in *Pelletier v.*

Burson:

The existence of fraud, mistake, or irregularity must be shown by clear and convincing evidence. Maryland courts have narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity, in order to ensure finality of judgments.

An irregularity is the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done. Furthermore, **an irregularity in the contemplation of Rule 2-535(b) is not an error**, which in legal parlance, generally connotes a departure from truth or accuracy of which a [party] had notice and could have challenged, **but a nonconformity of process or procedure**. Courts, therefore, have held that **if the judgment under attack was entered in conformity with the practice and procedures commonly used by the court that entered it, there is no irregularity** justifying the exercise of revisory powers under Rule 2-535(b).

Under Maryland law, an enrolled judgment can be set aside for mistake or irregularity. **Mistake is limited, however, to**

jurisdictional error, such as where the Court lacks the power to enter judgment.

213 Md. App. 284, 290-91 (2013) (emphasis added) (alterations in original) (citations and internal quotation marks omitted).

DISCUSSION

I. Subject Matter Jurisdiction

Jareaux argues that Proctor lost her standing to pursue her suit on behalf of the Company when Proctor filed for bankruptcy, because such filing caused Proctor to lose her membership in the Company. According to Jareaux, “[u]pon the commencement of a bankruptcy proceeding, derivative claims become the property of the bankruptcy estate and are subject to the control of the bankruptcy court.” Jareaux contends that, because Proctor did not have standing to pursue her derivative claims against Jareaux, the circuit court did not have subject matter jurisdiction to adjudicate Proctor’s claims.

We disagree with Jareaux’s contention that, assuming *arguendo* that Proctor lost standing to pursue her derivative claims, such loss of standing means that the circuit court lost its subject matter jurisdiction over the claims. We have explained the difference between standing and subject matter jurisdiction in *Maryland Waste Coalition, Inc. v. Maryland Department of Environment*:

We disagree with any implication in the trial judge’s statement that dismissing a case for lack of subject matter jurisdiction is “basically the same” as dismissing a case for lack of standing. Although the effect of the dismissal, barring the plaintiff’s cause of action, is the same, the issues on appeal are not. **Standing is concerned with whether the parties have the right to bring suit.**

Subject matter jurisdiction is concerned with whether the court has the power to hear a case.

84 Md. App. 544, 548 (1990) (emphasis added), *rev'd on other grounds*, 327 Md. 596 (1992); *see also Karabetis v. Mayor & City Council of Balt.*, 72 Md. App. 407, 419 (1987) (“If, by that law which defines the authority of the court, a judicial body is given the *power* to render a judgment over the class of cases within which a particular one falls, then its action cannot be assailed for want of subject matter jurisdiction.” (emphasis in original)).

In other words, whether Proctor had standing to pursue her derivative claims “is a separate issue from whether the circuit court had jurisdiction to hear that challenge.” *Lamb v. Kontgias*, 169 Md. App. 466, 473 (2006) (holding that the circuit court erred in deciding that it lacked the subject matter jurisdiction to decide whether a crime victim had standing to challenge the court’s revised judgment vacating the assailant’s original conviction and sentence); *see also Collins v. Cambridge Md. Hosp., Inc.*, 158 Md. 112 (1930) (holding that the orphan’s court had jurisdiction to determine whether persons challenging a will had standing to contest a caveat). The circuit court clearly had subject matter jurisdiction to decide the derivative claims outlined in Proctor’s complaint. *See First Baptist Church Of Friendly v. Beeson*, 154 Md. App. 650, 666 n.14 (2004) (“Maryland circuit courts have subject matter jurisdiction to adjudicate derivative actions.”). Therefore, Jareaux failed to show that there was a mistake or jurisdictional error below. *See Pelletier*, 213 Md. App. at 291.

II. Clerical Error

Jareaux argues that the circuit court erred in denying her motion to correct clerical error, because the court’s August 27, 2012 order held “in favor of the Plaintiff, Gail Proctor on Behalf of [the Company],” but the Notice of Recorded Judgment and the electronic Maryland Judiciary Case Search website listed the prevailing party as simply “Gail R. Proctor,” with no mention of the Company. According to Jareaux, because Proctor filed the suit on behalf of the Company and the court found in favor of Proctor on behalf of the Company, the Notice of Recorded Judgment “had the net effect of almost creating a new Order” in favor of Proctor individually. We disagree.

The circuit court’s order states the following:

THEREFORE, the Court on this 27th day of August 2012:

- A. ENTERS JUDGMENT in favor of the Plaintiff, Gail Proctor on behalf of Proceaux Properties, LLC, in the amount of \$49,942.00

The docket entry that reflects the entry of the court’s August 27, 2012 order states:

Order— re: hearing of August 6th, 7th and 8th
Judgment is entered in favor of plaintiff, Gail Proctor on behalf of Proceaux Properties LLC in the amount of \$49,942.00.
08/27/12 copies mailed (signed by Judge Gelfman for Judge McCrone).

The next day, August 28, 2012, the clerk issued a Notice of Recorded Judgment that states, in relevant part: “Judgment in favor of Proctor, Gail R.”

In *Board of Liquor License Commissioners for Baltimore City v. Fells Point Cafe, Inc.*, the Court of Appeals articulated the process by which a judgment is granted:

Rule 1-202(m) and Rule 2-601, taken together, make clear that **two acts must occur for an action by a court to be deemed the granting of a judgment: the court must render a final order and the order must be entered on the docket by the clerk.** Once both steps have occurred, rendition and entry, a judgment has been created. **Rendition of judgment is . . . the court’s pronouncement, by spoken word in open court or by written order filed with the clerk, of its decision upon the matter submitted to it for adjudication. The entry of a judgment is the purely ministerial act of placing a judgment in the permanent record of a court.**

344 Md. 120, 127-28 (1996) (emphasis added) (citations and internal quotation marks omitted).

Here, the circuit court rendered a judgment by written order in favor of Proctor “on behalf of” the Company. The clerk then properly entered the judgment by noting on the docket that judgment had been entered in favor of Proctor “on behalf of” the Company. Thus there was no error in the entry of a judgment on Proctor’s derivative claim.

Nevertheless, Jareaux claims a clerical error in the Notice of Recorded Judgment that somehow converted a judgment on a derivative claim to an individual judgment. A Notice of Recorded Judgment is required to be issued by the clerk “[p]romptly after entry” of a judgment. Md. Rule 2-601(c). Jareaux has cited to no authority, nor have we found any, stating that a clerical error in a Notice of Recorded Judgment affects, in any substantive manner, a judgment that is duly rendered by the court and entered by the clerk under Rule 2-601(a) and (b).

Indeed, Jareaux failed to show any error in the Notice of Recorded Judgment. The Notice states that the judgment is in favor of Proctor. The Notice does not say that the

judgment is “on behalf of” the Company; but it also does not say that the judgment is in favor of Proctor “individually.” The Notice is simply silent, and thus is not inconsistent with the trial court’s August 27, 2012 order. Jareaux also did not submit an affidavit from the Clerk of the Court stating that the Notice of Recorded Judgment contained an incorrect application of the court’s order, or that a court order was needed to correct any such error; nor did Jareaux subpoena the Clerk to testify that the Notice of Recorded Judgment was incorrect. In fact, Jareaux conceded in her motion to vacate that the “judgment is recorded within the Circuit Courts of Howard County and Baltimore City in Proctor’s name alone *due to the character field limitation in the case management software* that auto-populates into the judgment indexing system.” (Emphasis added). In sum, Jareaux did not present any law or evidence that the Notice of Recorded Judgment actually contained “a nonconformity of process or procedure.”³ See *Pelletier*, 213 Md. App. at 290 (citations and internal quotation marks omitted).

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED;
APPELLANT TO PAY COSTS.**

³ In her motion to correct clerical error and motion to vacate, Jareaux attacked Proctor’s decision to characterize the case as “Gail Proctor v. Marlana Jareaux” in her bankruptcy petition, and stated that Proctor “has wrongfully asserted in numerous other matters . . . to be the judgment creditor in this action.” As stated above, a clerical error implies that the *clerk*, not a party, has erred. If Jareaux wishes to attack Proctor’s characterization of the matter in other fora, the appropriate place to do so is in those other fora, not here.