Circuit Court for Montgomery County
Case No. 113443FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2234

September Term, 2017

ANDREW N. UCHEOMUMU

v.

DOROTHY O. EZEKOYE

Meredith,*
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: October 15, 2020

* Meredith, J., now retired, participated in the argument and conference of this case while an active member of the Court; after being recalled pursuant to Maryland Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this Opinion.

Andrew Ucheomumu, appellant, appeals from a judgment of the Circuit Court for Montgomery County denying his motions to modify or terminate his obligation to pay rehabilitative alimony to his former wife, Dorothy Ezekoye, appellee. Appellant presented four questions for our review, which we have rephrased:[1]

> I. Did the circuit court err in finding that the evidence presented was insufficient to support a finding of a material change in circumstances?
>
> II. Did the circuit court err in refusing to take judicial notice of evidence presented during earlier proceedings in the case?
>
> III. Did the circuit court err in refusing to modify enrolled judgments previously entered regarding alimony and arrearages?
>
> IV. Did the circuit court err in failing to vacate appellant's alimony obligation based upon his claim that his ex-wife acted with unclean hands in obtaining the award?

For the following reasons, we shall affirm.

[1] The four questions in appellant's brief were framed as follows:

> 1. Did The Trial Court Err In Finding That There Has Not Been Any Material Change In Circumstance To Modify The Alimony Award To The Appellee?
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> 2. Did The Trial Court Err And Misapplied The Law When Upon Request By The Appellant, The Court Refused To Take The Judicial Notice of Adjudicated Facts In The Same Case File?
>
> 3. Did The Trial Court Err And Misapplied The Law In Not Recognizing That Fraud Vitiates Anything It Touches?
>
> 4. Did The Trial Court Err And Misapplied The Law In Not Recognizing That Appellee's Alimony That She Procured With Fraud Must Be Vacated Under The Doctrine Of Unclean Hands?

FACTS AND PROCEDURAL HISTORY

For ease of understanding, we have divided the pertinent facts and procedural history into three periods, pertaining to: (1) the alimony award; (2) Mr. Ucheomumu's first motion to modify his alimony obligation; and (3) Mr. Ucheomumu's second motion to modify or terminate his alimony obligation.

Alimony award

Andrew Ucheomumu, appellant, was born in 1960. He and Dorothy Ezekoye, appellee, married in the United States in 1992. It appears that Ms. Ezekoye did not work outside the home during the marriage, but instead cared for the five children—all now adults—who were born to them during the course of their marriage. For 20 years, Mr. Ucheomumu earned a living by engaging in international joint business ventures, but, in 2009, he graduated from law school, and he subsequently earned two L.L.M. degrees.

In August 2013, Mr. Ucheomumu filed suit for divorce, and Ms. Ezekoye subsequently filed a claim for alimony. A hearing on the complaint for absolute divorce and the claim for alimony was held before Judge Cynthia Callahan on August 18, 2014. On August 26, 2014, the court entered a judgment of absolute divorce and ordered Mr. Ucheomumu to pay rehabilitative alimony to Ms. Ezekoye in the amount of $1,200 a month for 36 months—a total of $43,200 over three years—accounting from June 1, 2014.

Mr. Ucheomumu challenged the alimony order by filing a request for en banc review. *See* Maryland Rule 2-551. In the statement of reasons filed in support of his en banc appeal, Mr. Ucheomumu argued that "the trial Court err[ed] in not recognizing that[,] when the defendant willfully withheld legitimately requested information, she deprived the

court [of] the power to award her alimony." He also claimed that he had been denied due process because of the court's denial of his motion to compel discovery, and that the court erred in evaluating Ms. Ezekoye's "voluntary self-impoverishment." He further argued, *inter alia*, that Ms. Ezekoye had "willfully withheld legitimately requested discovery information, and then attempted to introduce a fraudulent tax returns [sic] during the trial." By order entered February 13, 2015, the en banc panel ordered that the judgment of Judge Callahan was affirmed.

First motion to modify alimony obligation

On February 6, 2015, Ms. Ezekoye filed a petition to hold Mr. Ucheomumu in contempt because he had not made a single alimony payment. (It appears that as of the date of the judgment that is the subject of the present appeal, Mr. Ucheomumu had paid a total of $40 toward his alimony obligation: a $20 payment in October 2015, and a $20 payment in December 2015.)

Despite the en banc panel's rejection of Mr. Ucheomumu's argument that Judge Callahan's order for rehabilitative alimony should be overturned because it was procured by fraud, Mr. Ucheomumu's March 24, 2015 response to the contempt petition asserted, *inter alia*, that he "contends the Court's judgment was prejudiced and based in part on fraud and misrepresentation (perjury) by [Ms. Ezekoye] and her attorney, and is therefore void and should not be enforced by any court," and that Ms. Ezekoye "is barred from the relief she seeks under the doctrine of unclean hands."

On the same date (March 24, 2015), Mr. Ucheomumu filed his first motion to modify alimony. He asserted that he had "no means of paying the alimony" and "has never

had any means of paying any alimony." He asserted that he had "no money to get an office" for his "fledgling legal practice," and that he "has no home." He said that he "is under severe financial hardship."

On August 18, 2015, a hearing on the motions was held before Magistrate James Bonifant. At the conclusion of the hearing, the magistrate placed several findings on the record. He found: "There has been no significant change in [Ms. Ezekoye's] income and there was no evidence presented regarding her expenses[,] so I cannot find that there has been any material change in her expenses." But the magistrate also found: "There was no evidence produced showing a material change in [Mr. Ucheomumu's] expenses since the entry of the alimony award in 2014." With respect to income, the magistrate observed that, although Mr. Ucheomumu "argued that his health prevented him to earn currently what he earned in 2014[,] I have difficulty accepting this." The magistrate had also reviewed Mr. Ucheomumu's 2014 tax return, and commented: "[H]e has taken as business expenses many expenses which reduce his personal living expenses." The magistrate summed up his analysis: "**I do not believe [Mr. Ucheomumu] has met his burden to show that there has been a material change in circumstances from the August 2014 order[,] and I do not believe that he has met his burden to show that he was incapable of paying the alimony awarded or that he never had the ability to pay.**" (Emphasis added.) The magistrate recommended that the court deny Mr. Ucheomumu's motion to modify alimony and grant Ms. Ezekoye's petition for contempt. The magistrate also recommended that "an alimony arrearage be established as of today, August 18, 2015, in the amount of $18,000."

By order entered November 6, 2015, the circuit court held that the petition for contempt was granted, and that Mr. Ucheomumu's motion to modify alimony was denied. The court thereafter denied Mr. Ucheomumu's motion for reconsideration and motion for new trial. On January 15, 2016, the circuit court entered a judgment in the amount of $18,000.00 in favor of Ms. Ezekoye against Mr. Ucheomumu.

In the meantime, Mr. Ucheomumu noted an appeal from the judgment denying his motion to modify alimony and holding him in contempt. (That appeal was eventually dismissed by this Court upon procedural grounds. *See Ucheomumu v. Ezekoye*, No. 2403, Sept. Term, 2015 (filed December 21, 2016). The judgment denying Mr. Ucheomumu's first motion to modify alimony and holding him in contempt for his failure to make payments of alimony became final.)

Second motion to modify/vacate alimony obligation

While his appeal of the judgment denying his first motion to modify alimony was pending, Mr. Ucheomumu filed his second motion to modify his alimony obligation on January 28, 2016. This is the motion that is the subject of the present appeal. In this motion, he alleged that there were three material changes in his circumstances: (1) he stated he was facing "crushing legal bills" that were incurred subsequent to the August 18, 2015 hearing before the magistrate; (2) he was "now paying rent in the amount of $1,750 per month"; and (3) he had experienced a "sharp drop in clients" since the August 2015 hearing due to a disciplinary action instituted against him by the Attorney Grievance Commission. By order entered April 19, 2016, the circuit court stayed action on Mr. Ucheomumu's second

motion to modify alimony "pending the outcome of the appeal [he] has filed before the Court of Special Appeals."

With respect to the disciplinary action referred to in Mr. Ucheomumu's second motion to modify alimony, the Court of Appeals filed an opinion on December 15, 2016, explaining that Mr. Ucheomumu had "engaged in serious, wide-ranging misconduct, and violated numerous MLRPC, two Maryland Rules, and one provision of the Code of Maryland." *Attorney Grievance Commission of Maryland v. Ucheomumu*, 450 Md. 675, 716 (2016). The sanction imposed by the Court at that time was to "indefinitely suspend [Mr. Ucheomumu] from the practice of law in Maryland with the right to apply for reinstatement after 90 days." *Id*. at 717.

On April 7, 2017, Mr. Ucheomumu filed a document captioned "Motion to Schedule This Matter for Trial, Additional Grounds for Modification and Change of Address." In this motion, he reported that his appeal of the judgment denying his first motion to modify alimony had been dismissed by the Court of Special Appeals "on technicality without reaching the merit of the appeal," and therefore, he said, "this matter is now ripe for adjudication." With respect to his additional grounds for modification of alimony, he stated: "That on December 15, 2016 the Court of Appeals indefinitely suspended [Mr. Ucheomumu] from the practice of law, and [he] is now without income." He prayed for the court to "modify the alimony and vacat[e] the same."

On November 13, 2017, a hearing was held before Judge Kevin G. Hessler on Mr. Ucheomumu's motion to modify and vacate the alimony obligation that had been previously affirmed by an en banc panel, and reaffirmed by the circuit court's adoption of

the magistrate's recommendations by order entered November 6, 2015 (as to which Mr. Ucheomumu's appeal was dismissed by this Court on December 21, 2016). At the November 13, 2017 hearing, Mr. Ucheomumu represented himself. He introduced into evidence, among other things, his federal tax returns for 2015 (business income/adjusted gross income of $35,064/$5,535) and 2016 (business income/adjusted gross income of $19,000/-$4,493). He also introduced into evidence: Ms. Ezekoye's tax returns for 2015 (adjusted gross income of $30,478) and 2016 (adjusted gross income of $26,275); a notice from the Internal Revenue Service dated April 24, 2017, stating that he owed unpaid taxes for 2013 in the amount of $4,341.34; and the Court of Appeals's decision on the Attorney Grievance matter (450 Md. 675 (2016).) He testified that he had no income, and that most of his living expenses were provided by friends, most notably his friend "Ester" whom he refused to identify more fully. He provided no information about any efforts to find employment. He called Ms. Ezekoye during his case in chief, and she testified, among other things, that she works for a company as a certified nursing assistant in patient's homes.

At the conclusion of Mr. Ucheomumu's case in chief, Ms. Ezekoye moved for judgment pursuant to Maryland Rule 2-519. During Mr. Ucheomumu's argument in opposition to the motion for judgment, the judge pointed out shortcomings in the evidence that had been introduced. With respect to Mr. Ucheomumu's assertion that he had experienced a material change in circumstances since the hearing in front of Magistrate Bonifant on August 18, 2015, the following colloquy ensued:

THE COURT: There's no evidence in this hearing as to what your income was when the matter was in front of Magistrate Bonifant. There's no evidence in this hearing about what that was. So, how am I to sit here – based on the evidence that's been presented right now, how am I supposed to ascertain whether there's been a material change since then or not if you didn't provide the information to me about what your income was then?

* * *

MR. UCHEOMUMU: Your Honor, even if the Court does not have any point of references, prior incomes, looking at the income today on the two evidence that was admitted, it would be inequitable.

THE COURT: But how do I know that that wasn't the same kind of evidence that was before the Court back then, and they simply just didn't believe you?

MR. UCHEOMUMU: Because . . . the record of that hearing is in this court. All the evidence in that hearing is in this court, and the Court should take judicial notice of that.

THE COURT: Well, you haven't asked me to do that, and you didn't as part of your case – and I'm not going to do it now because your case – you said a little while ago that you rested, and I'm here to decide this motion based on the evidence that you've presented thus far.

MR. UCHEOMUMU: Well, the evidence that – to decide this motion, Your Honor, it has to be looked [at] in the light most favorable to me.

THE COURT: But if there's no evidence . . . about what the income was, what your income was, or your expenses, for that matter, back at the time this matter was before Magistrate Bonifant [in August 2015] or at the time of the Court's November 2015 order [adopting Magistrate Bonifant's recommendations and denying the first motion to modify alimony], what is the evidence that I could even look at in the light most favorable to you?

There's a difference between an absence of evidence and evidence that might be in dispute that I could look at in a light most favorable to you. But if there's no evidence about that, how am I to make a determination about whether there's been a material change in circumstances? The burden of proof, because you're the party asking for the modification or termination or to have that order vacated, is on you. And if you did not provide that, then I'm not sure how it can be said you met your burden of proof on that issue.

* * *

> MR. UCHEOMUMU: The material change of circumstances, Your Honor, is that then I was a practicing attorney making money.
>
> THE COURT: But how do I know that? That's not in – what you were making as a practicing attorney at the time of the hearing that resulted in the current order [for alimony] that you're trying to modify is not before me. So, how am I to determine whether any change that's happened since then is A, related to your – well, related to your cessation of law practice, and B, material from the way things were before the suspension happened?
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> * * *
>
> THE COURT: From the evidence that's been presented, you can't say that I'm allowed to infer a change in circumstances. I have to decide this based on the evidence that there is, and if you didn't put in – I'll say it again. If you didn't put in evidence of what the baseline amount was, what your financial circumstances were at the time of Magistrate Bonifant's hearing [in August 2015] and the November [2015] order, I can't just infer that they were better or worse or the same, and I can't infer that any change that you're saying occurred is material. I don't have the evidence to just simply infer your way past this motion.

The court also questioned Mr. Ucheomumu about the power of the court to vacate the previously enrolled judgments:

> THE COURT: Well, let me ask you this. Were you able to find, or do you have, any authority for me to indicate that I have the ability to vacate the enrolled order for the $18,000 in alimony that you were determined to owe?
>
> MR. UCHEOMUMU: Your Honor, if the Court can take this under advisement, I will find the authority.
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> * * *
>
> THE COURT: If you don't have it, you don't have it.
>
> MR. UCHEOMUMU: I don't have it, Your Honor.

The court also pointed out that there had been no evidence offered with respect to job applications or efforts to earn income since the time his license to practice law was suspended. The court observed:

> THE COURT: . . . Here we are in November of 2017. I don't have any evidence that you made any efforts to become employed, to make money in some other way, to even apply for other jobs. I don't have any evidence that you've been making any job efforts, that you've talked to a vocational assessment person or anything else. And the only thing I've heard is that you're living off your fiancée, girlfriend, whoever – the person you live with, and that – I don't know if you're content to do that or not, but in any event, it seems to be that's what you've been doing.
>
> But I haven't heard any evidence about any efforts that you've made to try to find other employment or to earn something to help pay for your needs, as you claim they are. So, that's another difficulty I have with establishing that you're entitled to the relief that you're requesting or that the alimony should be modified.
>
> * * *
>
> MR. UCHEOMUMU: . . . The fact is this, that looking for employment, I couldn't. In fact, I'm not even in the frame of mind to look for employment at all. I'm not in the frame of mind, I wouldn't – to looking for employment.
>
> THE COURT: You said you're not – the reason you haven't looked for employment is you're not in the frame of mind to look for employment?
>
> MR. UCHEOMUMU: I'm not in the frame of mind to look for employment because I'm still dealing with the remnants of my suspension, dismantling everything I've built, and I couldn't possibly even think of looking for a job now.

At the conclusion of the argument on the motion for judgment at the close of Mr. Ucheomumu's case, he made another reference to judicial notice:

> MR. UCHEOMUMU: . . . So, there has been a material change in circumstances, and if the case moves forward, I will ask the Court – if the case moves forward from this motion, I will ask the Court to take judicial

> notice of the exhibits that were submitted in front of [Magistrate] Judge Bonifant is still in this case and is still here in this court.

After hearing argument from both parties, the court denied the second motion to modify (or vacate) the award of rehabilitative alimony. The court noted that the judgment for $18,000 in alimony arrearages, entered on January 15, 2016, was "an enrolled judgment, and the Court's power to revise an enrolled judgment is set forth in Maryland Rule 2-535, and it does not appear that the prerequisites for that established by that rule are present in this case." "I do not think that the evidence supports the conclusion that the plaintiff has established a fraud, mistake, or irregularity within the meaning of that rule so as to permit the Court to revise it." "[T]he plaintiff has not established either a mistake or an irregularity, and certainly no fraud that would warrant the Court vacating the judgment, the $18,000 judgment against him. So, that part of the plaintiff's claim is denied." And, with respect to the motion to modify or terminate the balance of the rehabilitative alimony obligation, the court concluded that, because Mr. Ucheomumu "did not establish what his financial situation was as of the time of the order that he seeks to modify," the court was "not convinced that . . . any changes that have occurred since [November 2015, when the court denied the first motion to modify] are material."

The court's written order was entered on December 8, 2017. Mr. Ucheomumu filed a motion for reconsideration, which the court denied. This appeal followed.

DISCUSSION

Mr. Ucheomumu contends that the circuit court abused its discretion and committed multiple legal errors in denying his second motion to modify/vacate his alimony obligation.

First, he argues that the court erred in not finding a material change in circumstance to warrant modifying/vacating his alimony obligation. Second, he argues that the court erred in refusing to take judicial notice of evidence previously submitted during prior hearings. Third, he argues that the court erred in not vacating his alimony obligation because his ex-wife had acted fraudulently at their divorce/alimony hearing when she presented their daughter's tax returns as her own. Fourth, he argues that we should vacate his alimony obligation because his ex-wife acted with unclean hands in obtaining the award by representing their daughter's tax returns as her own. Ms. Ezekoye disagrees with each of his arguments, as do we.

Standard of Review

In cases such as this, which have been tried without a jury, we "review the case on both the law and the evidence." Md. Rule 8-131(c). We "will not set aside the judgment of the trial court on the evidence unless [it is] clearly erroneous," and we "will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." *Id*. As with an original alimony award, a circuit court's "decision on the question of modification . . . is left to the sound discretion" of the circuit court. *Cole v. Cole*, 44 Md. App. 435, 439 (1979) (citation omitted). "We review a trial court's grant of a motion for judgment under the same analysis used by the trial court." *Barrett v. Nwaba*, 165 Md. App. 281, 290 (2005) (citation omitted). Because this case was not tried to a jury, the trial court was not obligated to consider the evidence in the light most favorable to the non-moving party. Instead, Maryland Rule 2-519(b) provides: "When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed,

as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence."

A court "may modify the amount of alimony awarded as circumstances and justice require." Md. Code, Family Law Article ("FL"), §11-107(b). But, cases have held that a court may modify an alimony order upon a showing of a material change in circumstances justifying that action. *Tidler v. Tidler*, 50 Md. App. 1, 9 (1981) (citations omitted). "What amounts to a substantial change in the husband's financial circumstances is a matter to be determined in the sound discretion of the chancellor for which there are no fixed formulas or statutory mandate." *Lott v. Lott*, 17 Md. App. 440, 447 (1973) (citation omitted).

A court may terminate alimony "if the court finds that termination is necessary to avoid a harsh and inequitable result." FL §11-108(3). "[T]ermination of alimony to avoid a harsh and inequitable result does not operate as a matter of law and requires a court to examine facts and circumstances to determine whether harsh and inequitable results exist. Whether a result is harsh and inequitable is a subjective determination." *Bradley v. Bradley*, 214 Md. App. 229, 237 (2013).

A party paying alimony "must demonstrate through evidence presented to the trial court that the facts and circumstances of the case justify the court exercising its discretion to grant the requested modification." *Langston v. Langston*, 366 Md. 490, 516 (2001), *abrogated on other grounds by Bienkowski v. Brooks*, 386 Md. 516, 545 (2005). As a result, in a proceeding on a petition to modify alimony, parties "may not re-litigate matters that were or should have been considered at the time of the initial award." *Blaine v. Blaine*, 97 Md. App. 689, 698 (1993) (quotation marks and citations omitted), *aff'd*, 336 Md. 49

(1994)). Additionally, "a trial court, in its discretion, may modify an alimony award retroactive to a date preceding the filing of a formal motion for modification when the party seeking modification files an appropriate motion with the court and sufficiently demonstrates the need for such modification." *Langston*, 366 Md. at 500. In exercising its discretion "to allow modification, either retroactively or prospectively, the trial court must balance the needs of the party seeking modification with the interests of the other party." *Id*.

With respect to an enrolled judgment, Maryland Rule 2-535(b) 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." But, as cases have made plain, only extrinsic fraud will justify revision of an enrolled judgment; an allegation of fraud that is intrinsic to the case must be raised by way of a timely appeal, if at all. *See Oxendine v. SLM Capital Corp.*, 172 Md. App. 478, 492 (2007).

Further, issues decided on appeal in a case generally may not be reargued during later proceedings in the case. Under the law of the case doctrine:

> "[O]nce an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Scott v. State*, 379 Md. 170, 183, 840 A.2d 715 (2004); *see also Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, 55, 949 A.2d 639 (2008). It is the country cousin to the more ornately named doctrines of *res judicata*, collateral estoppel and *stare decisis*.

Baltimore County v. Fraternal Order of Police, Baltimore County Lodge No. 4, 449 Md. 713, 729 (2016) (footnote omitted).

I.

Mr. Ucheomumu argues that the circuit court erred in denying his request to modify or vacate his alimony obligation because his December 2016 suspension from the practice of law clearly constituted material change in circumstance. But the trial court did not overlook the fact that Mr. Ucheomumu had been suspended from the practice of law in December 2016, *i.e.*, subsequent to the next most recent date the circuit court had confirmed the amount of alimony. The trial court found that Mr. Ucheomumu had not introduced evidence during his case in chief to give the court a basis to compare his financial circumstances as of the two pertinent dates. We agree with the trial court: the evidence the court needed to make an analysis of whether there had been a material change in circumstances was not introduced. And Mr. Ucheomumu's suggestion that the court should simply take judicial notice of the evidence that had been previously introduced during earlier phases of the litigation was (1) not made until after Mr. Ucheomumu had closed his case and his former wife had made a motion for judgment, and (2) an overly vague description of what the court was being asked to notice and how that information would prove Mr. Ucheomumu's prior financial condition.

A court is not required to modify an award of alimony simply because of a finding of a material change in circumstances. *Cf. Smith v. Freeman*, 149 Md. App. 1, 21 (2002) ("A material change in circumstances does not necessarily compel a modification" of a child support award). Moreover, we have noted that a temporary decrease in income does not necessarily justify a change in alimony. *Cf. Stansbury v. Stansbury*, 223 Md. 475, 478

(1960) (a decrease in the husband's income because of a dip in the income of his firm which appeared merely temporary would not justify a change in alimony).

To support his argument that the circuit court erred in not finding a material change in circumstances, Mr. Ucheomumu has included in his brief a table and several charts he created post-judgment showing the net and gross incomes for him and his ex-wife from 2012 through 2016 based on their respective tax returns for those years. But these charts include facts that were not introduced into evidence at the hearing on the second motion to modify. At that hearing, Mr. Ucheomumu presented his and his ex-wife's 2015 and 2016 tax returns only. Mr. Ucheomumu presented no evidence of his financial situation at the time of the alimony award or the hearing on his first motion to modify. As the circuit court noted during the hearing on Mr. Ucheomumu's second motion to modify alimony, he failed to introduce evidence to establish how suspension from the practice of law had changed his financial situation.

Moreover, Mr. Ucheomumu testified that virtually all of his financial needs were being met by his friend Ester, and he admitted to the trial judge that he was simply not in the "frame of mind" to pursue another source of employment income. Mr. Ucheomumu also failed to produce any evidence of the legal bills that he incurred because of the disciplinary hearing, nor did he introduce any documentation regarding his law practice. Under the circumstances, we find no error or abuse of discretion by the court in denying Mr. Ucheomumu's second motion to modify for lack of evidence.

II.

Mr. Ucheomumu argues that the circuit court erred by not taking judicial notice of "facts in the case record of the same case." Ms. Ezekoye responds that the circuit court did not err because Mr. Ucheomumu's request was untimely, and the facts of which Mr. Ucheomumu requested the court to take judicial notice are not properly subject to judicial notice.

Maryland Rule 5-201 addresses judicial notice and states, in relevant part:

> **(a) Scope of Rule.** This Rule governs only judicial notice of adjudicative facts. Sections (d), (e), and (g) of this Rule do not apply in the Court of Special Appeals or the Court of Appeals.
>
> **(b) Kinds of Facts.** A judicially noticed fact *must be* one not subject to reasonable dispute in that it is either (1) *generally known within the territorial jurisdiction* of the trial court *or* (2) *capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned*.
>
> **(c) When Discretionary.** A court may take judicial notice, whether requested or not.
>
> **(d) When Mandatory.** A court shall take judicial notice if requested by a party and supplied with the necessary information.
>
> **(e) Opportunity to Be Heard.** Upon timely request, a party is entitled to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
>
> **(f) Time of Taking Notice.** Judicial notice may be taken at any stage of the proceeding.

(Italics added.)

"Generally, judicial notice may only be taken of matters of common knowledge or [those] capable of certain verification." *Dashiell v. Meeks*, 396 Md. 149, 174-75 (2006)

(quotation marks and citations omitted). "The latter category includes facts which are capable of immediate and certain verification by resort to sources whose accuracy is beyond dispute." *Id*. at 175 (quotation marks and citations omitted).

This Court summarized the parameters in *Abrishamian v. Washington Medical Group, P.C.*, 216 Md. App. 386, 413 (2014): "Trial courts can take judicial notice of matters of common knowledge or [those] capable of certain verification." (Citations and internal quotation marks omitted.) We explained:

> What unites these various classes of information is not so much their nature as public or widely-known, but more their nature as *undisputed*—as one commentator has described it, falling into either the "everybody around here knows that" category, or the "look it up" category. *See* Lynn McLain, Maryland Evidence, State & Federal § 201:4(b)-(c), at 221, 237 (3rd ed. 2013). Put another way, "[i]f there is no reason to waste time proving a fact, it can be 'judicially noted.' " Joseph Murphy, Maryland Evidence Handbook § 1000, at 489 (4th ed. 2010). But the doctrine does not typically extend to facts relating *specifically* to the parties involved. *See, e.g., Walker v. D'Alesandro*, 212 Md. 163, 169, 129 A.2d 148 (1957) (finding error where trial court took judicial notice that defendant had taken certain actions in his official capacity as mayor of the City of Baltimore).

Id. at 414.

We apply the clearly erroneous standard to review a trial court's decision whether to take judicial notice of information because we recognize that "there is a legitimate range within which notice may be taken or declined." *Abrishamian*, 216 Md. App. at 413.

After Mr. Ucheomumu rested his case and Ms. Ezekoye moved for judgment, the court pointed out fatal deficiencies in the evidence Mr. Ucheomumu had presented. It was at that late juncture that Mr. Ucheomumu sought to cure the inadequacy of his evidence by asking the court to take judicial notice of evidence presented during previous hearings in

the case. The court declined to do so, explaining that the court had been called upon to "decide this motion based on the evidence that you've presented thus far."

Rule 5-201(f) permits judicial notice to be taken at "any stage of the proceeding." "This has been correctly interpreted to mean that judicial notice may be taken [even] during appellate proceedings." *Dashiell*, 396 Md. at 176 (citations omitted). But the facts the court is able to judicially notice must be those of the sort we described in *Abrishamian*, *i.e.*, "falling into either the 'everybody around here knows that' category, or the 'look it up' category." 216 Md. App. at 414. Mr. Ucheomumu's broad and nebulous request for the trial court to "notice" evidence presented during prior proceedings fell into neither of those two categories. And Mr. Ucheomumu never specified what exhibits or facts he was asking the court to judicially notice. Therefore, Mr. Ucheomumu failed to supply the lower court with the "necessary information," as required by Rule 5-201(d). And we conclude that the court's denial of the request was not clearly erroneous.

III.

With respect to the third issue raised by Mr. Ucheomumu, he contends that the trial court erred in failing to void the award of alimony because, he asserts, Ms. Ezekoye perpetrated a fraud on the court by apparently misidentifying a tax return of her daughter as her own. Mr. Ucheomumu posits that Ms. Ezekoye acted fraudulently at the original alimony hearing when she represented their daughter's 2012 and 2013 tax returns as her own.

As noted above, however, in Mr. Ezekoye's en banc appeal from the initial judgment awarding alimony, he raised the issue of this alleged fraud. The en banc panel

rejected the argument and affirmed the award of $1,200 per month in rehabilitative alimony. Consequently, that appellate panel's rejection of Mr. Ucheomumu's fraud argument became law of the case, and bars further litigation of the claim. *See* Rule 2-551(h), stating: "Any party who seeks and obtains review under this Rule has no further right of appeal." *See also State v. Phillips*, 457 Md. 481, 512 (2018), recognizing "the true comparability and compatibility of in banc review with an appeal to the Court of Special Appeals and this Court. The appeal in both situations is from the judgment, which brings before the appellate court all issues that were properly preserved for appellate review, including those determined by interlocutory orders."

Moreover, the award of rehabilitative alimony became an enrolled judgment. Although Rule 2-535(b) provides that, in civil circuit court cases, "[o]n 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," the rule does not contemplate multiple bites at the apple.

Furthermore, as used in Rule 2-535(b), the terms "fraud, mistake, or irregularity" are "narrowly defined and are to be strictly applied." *Early v. Early*, 338 Md. 639, 652 (1995) (citation and footnote omitted). "[A] litigant seeking to set aside an enrolled decree must prove extrinsic fraud and not intrinsic fraud." *Billingsley v. Lawson*, 43 Md. App. 713, 718-19, *cert. denied*, 286 Md. 743 (1979) *cert. denied*, 446 U.S. 919 (1980). As we explained in *Oxendine*, 172 Md. App. at 492:

> It is black letter law in Maryland that the type of fraud which is required to authorize the reopening of an enrolled judgment is "extrinsic" fraud and not fraud which is "intrinsic" to the trial itself. *Hresko v. Hresko*,

> 83 Md. App. 228, 231, 574 A.2d 24 (1990) (citing *Schneider v. Schneider*, 35 Md. App. 230, 238, 370 A.2d 151 (1977)). *See also Billingsley v. Lawson*, 43 Md. App. 713, 719, 406 A.2d 946 (1979) ("[A] litigant seeking to set aside an enrolled decree must prove extrinsic fraud and not intrinsic fraud.").
>
> In *Hresko v. Hresko*, 83 Md. App. at 232, 574 A.2d 24, this Court distinguished intrinsic and extrinsic fraud:
>
> > Intrinsic fraud is defined as "[t]hat which pertains to issues involved in the original action or where acts constituting fraud were, or could have been, litigated therein." Extrinsic fraud, on the other hand, is "[f]raud which is collateral to the issues tried in the case where the judgment is rendered."
>
> In essence, "[f]raud is extrinsic when it actually prevents an adversarial trial but it is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, that truth was distorted by the complained of fraud." *Billingsley*, 43 Md. App. at 719, 406 A.2d 946.

Therefore, "an enrolled decree will not be vacated even though obtained by the use of forged documents, perjured testimony, or any other frauds" because these "are intrinsic to the trial of the case itself." *Manigan v. Burson*, 160 Md. App. 114, 120-21 (2004) (quotation marks and citation omitted).

So, even if the question Mr. Ucheomumu raised in his brief regarding the alleged fraudulent use of tax returns during the 2014 hearing on alimony was not barred by the previous appeals, it is not an allegation of extrinsic fraud that would be addressable pursuant to Rule 2-535(b). And, in any event, he presented no credible evidence at the hearing on his second motion for modification alimony that the allegedly fraudulent tax returns were either introduced into evidence, or purposefully used at the original alimony hearing to gain an unfair advantage, or relied upon by Judge Callahan in determining the appropriate amount of rehabilitative alimony.

Accordingly, we conclude that the court did not err in declining to vacate the alimony award due to alleged fraud by Ms. Ezekoye.

IV.

Finally, Mr. Ucheomumu urges us to vacate the original alimony order under the doctrine of "unclean hands." This argument is essentially a variation of his claim that the original award of alimony was tainted by fraud. With respect his claim of "unclean hands," he states in his brief: "As can be seen clearly, Ms. Ezekoye used fraudulent tax returns and assumed the identity of the parties' daughter that was named after her as proof of her income in seeking alimony in this case." He asserts: "This Court must 'safeguard the judicial process,' by revisiting the alimony that was awarded to Ms. Ezekoye, which she obtained by directly introducing into evidence two fraudulent tax returns with incredibly diminished income."

As noted above the only tax returns Mr. Ucheomumu introduced at the hearing on the motion that is the subject of this appeal were from 2015 and 2016. There was no evidence at this hearing to support the claim of fraudulent use of tax returns during the 2014 hearing at which the court decided to award rehabilitative alimony to the woman who had stayed at home to raise Mr. Ucheomumu's five children to adulthood.

For the same reasons that Mr. Ucheomumu's argument regarding fraud did not provide a basis for the court to grant his second motion to modify alimony, neither did the "unclean hands" variation of the fraud argument compel modification.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.