

Circuit Court for Baltimore City
Case No. 24-C-19-002894

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2526

September Term, 2019

MAURICE ALONZO BRISCOE

v.

MAGGIE REAL ESTATE, LLC

Fader, C.J.,
Shaw Geter,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: June 22, 2021

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

Maurice Alonzo Briscoe, the appellant, asks us to direct the Circuit Court for Baltimore City to vacate a confessed judgment entered in favor of Maggie Real Estate, LLC, the appellee, and to afford him a trial. We are not able to do so because Mr. Briscoe did not timely appeal from the entry of the confessed judgment, and his allegations of intrinsic fraud and irregularity are not a basis on which the prior judgment can now be reopened.

BACKGROUND

Mr. Briscoe alleges that he entered an oral agreement with Maggie Real Estate pursuant to which: (1) Maggie Real Estate would lend him \$185,000 to purchase the property located at 2801 Denison Street in Baltimore City (the “Property”) from Wells Fargo Bank; (2) he would use those funds to purchase the Property and then renovate it; and (3) after completion of the renovations, Maggie Real Estate would purchase the Property from Mr. Briscoe for “approximately \$200,000.” Mr. Briscoe contends that he obtained the loan from Maggie Real Estate and purchased and renovated the Property, but that Maggie Real Estate then refused to purchase the Property from him, which left Mr. Briscoe without sufficient funds to repay the debt owed to Maggie Real Estate when it came due. Notably, the loan from Maggie Real Estate to Mr. Briscoe was secured by a deed of trust and evidenced by a note, the latter of which contained provisions for a confessed judgment and 22% interest on late payments. Once the loan was overdue, Maggie Real Estate demanded payment in full of the principal and all accrued interest. Mr. Briscoe did not pay.

On May 15, 2019, Maggie Real Estate filed a complaint for confessed judgment in the Circuit Court for Baltimore City. On June 3, the court entered judgment for \$211,907.35 in principal and interest. Mr. Briscoe subsequently filed a motion to vacate the confessed judgment, which the circuit court denied on August 9. Mr. Briscoe, then self-represented, did not appeal from the entry of the confessed judgment or the denial of the motion to vacate.

On September 18, 2019, Maggie Real Estate filed a line asking the circuit court to issue a writ of execution directing the Sheriff of Baltimore City to seize the Property and hold it for sale. The court issued writs of execution on September 23 and October 1. On October 15, Mr. Briscoe filed a motion in which he asked the court to stop the sale of the Property. On January 15, 2020, after a hearing, the court denied Mr. Briscoe’s motion on the ground that he presented no legally cognizable basis for the court’s jurisdiction to stop the sale. Mr. Briscoe filed this appeal.

DISCUSSION

Mr. Briscoe presents a single question for our review:

Did [Maggie Real Estate] fraudulently induce [Mr. Briscoe] into entering into the Note and, consequently, is the confessed judgment associated with that Note invalid and unenforceable as an “actual controversy as to the merits” existed, and was required to be heard, pursuant to Md. Rules, Rule 2-611(e)?

The crux of Mr. Briscoe’s claim is that he was fraudulently induced to enter the loan transaction with Maggie Real Estate. He contends that the circuit court erred in refusing to vacate the confessed judgment, stop the sale, and set the matter for trial, at which Mr. Briscoe could prove the alleged fraud.

We are unable to afford Mr. Briscoe the relief he seeks because he did not timely appeal from the entry of the confessed judgment, which was entered on June 3, 2019, or from the denial of his motion to vacate that judgment, which was entered on August 9, 2019. Pursuant to Rule 8-202(a), Mr. Briscoe had until September 9, 2019 to note an appeal from the denial of the motion to vacate. He did not do so and, consequently, the judgment became final.

Under Rule 2-535(a), a court has “broad discretion . . . to revise its judgment within thirty days after entry.” *Peay v. Barnett*, 236 Md. App. 306, 319 (2018). Once 30 days have passed, however, a court’s authority to vacate a judgment is limited to that provided by Rule 2-535(b), which states: “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.” Mr. Briscoe, now represented by counsel, contends that the circuit court should have treated his motion to stop the sale of the Property as a motion to reopen the confessed judgment pursuant to Rule 2-535(b). In his reply brief, he argues that both fraud and irregularity apply here. We will address both contentions in turn.

For purposes of Rule 2-535(b), only extrinsic fraud, as contrasted with intrinsic fraud, constitutes a ground for revising a judgment or order. *See Facey v. Facey*, 249 Md. App. 584, 611 (2021). Intrinsic fraud “pertains to issues involved” in the action itself “or where acts constituting fraud were, or could have been, litigated therein.” *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990). Extrinsic fraud, on the other hand, is “collateral to the issues tried in the case where the judgment is rendered,” *id.*, and “perpetrates an abuse of judicial process by preventing an adversarial trial and/or impacting the jurisdiction of

the court,” *Facey*, 249 Md. App. at 632 (emphasis removed). Here, the fraud Mr. Briscoe alleges was intrinsic. He contends that he was fraudulently induced to enter the note upon which the confessed judgment was based. He does not contend that Maggie Real Estate kept him ignorant of the judicial proceedings and thereby prevented him from being able to present his case. To the contrary, he alleges that he timely filed a motion to vacate the confessed judgment and that the circuit court erred in failing to consider it. Mr. Briscoe thus has not alleged fraud for purposes of Rule 2-535(b).

For purposes of Rule 2-535(b), irregularity means “a failure to follow required process or procedure.” *Early v. Early*, 338 Md. 639, 652 (1995); *see also Alban Tractor Co. v. Williford*, 61 Md. App. 71, 79 (1984) (finding that a clerk’s failure to send a copy of a final order may be an irregularity allowing the court to revise an enrolled judgment). Irregularities “result[ing] from a failure of process or procedure by the clerk” include “failures to send notice of a default judgment” and failures to “mail a notice to the proper address.” *Thacker v. Hale*, 146 Md. App. 203, 219-20 (2002); *see also Md. Lumber Co. v. Savoy Constr. Co.*, 286 Md. 98, 103 (1979) (finding an irregularity where the clerk never sent notice of entry of a default judgment). Here, Mr. Briscoe contends that the court’s failure to hold a hearing on his motion to vacate the confessed judgment was an irregularity. However, a failure to hold a hearing is not the sort of irregularity that is cognizable under Rule 2-535(b). Unlike a clerk’s failure to send a copy of an order to a party or use of an incorrect address, a court’s failure to hold a hearing does not deprive a party of an opportunity to timely challenge a judgment or order.

At oral argument, Mr. Briscoe asserted that *EMI Excavation, Inc. v. Citizens Bank of Maryland*, 91 Md. App. 340 (1992), stands for the proposition that a failure to hold a hearing on a motion to vacate a confessed judgment constitutes an irregularity for purposes of Rule 2-535(b). It does not. In *EMI Excavation*, this Court held that Rule 2-311(f) requires a court to provide a hearing on a motion to vacate a confessed judgment when a hearing is properly requested.¹ 91 Md. App. at 345-46. That decision did not address Rule 2-535(b) at all, nor was there any need to do so because the appellant in that case timely appealed the trial court’s denial of its motion to vacate the confessed judgment. *Id.* at 341. This Court reversed on the ground that the circuit court had erred in failing to hold a hearing. *Id.* *EMI Excavation* thus demonstrates that the proper mechanism to challenge a trial court’s failure to hold a hearing pursuant to Rule 2-311(f) is a direct appeal. Here, Mr. Briscoe had the opportunity to raise the court’s failure to hold a hearing by noting an appeal from the order denying his motion to vacate. He did not do so, and Rule 2-535(b) does not provide an avenue for him to raise the issue now.

Limitations on a party’s right to reopen a judgment once it has been entered for more than 30 days serve “to ensure finality of judgments.” *Thacker*, 146 Md. App. at 217. Accordingly, the circumstances in which a judgment can be reopened under Rule 2-535(b) are narrow. Mr. Briscoe’s failure to note a timely appeal from the confessed judgment was

¹ Rule 2-311(f) provides that to request a hearing on a motion, a party must do so “under the heading ‘Request for Hearing,’” and that “[t]he title of the motion or response shall state that a hearing is requested.” Mr. Briscoe did not comply with either of those requirements. Nonetheless, solely for purposes of argument, we will assume that his request was sufficient to notify the court of his request for a hearing.

not the result of extrinsic fraud or irregularity as contemplated by the Rule. As a result, the circuit court did not err in determining that it lacked the authority to reopen the confessed judgment and, therefore, had no basis to halt the sale of the Property. Accordingly, we will affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**