

Circuit Court for Baltimore City
Case No. 100144021
The Honorable Timothy Doory

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 920

September Term, 2016

DEAN ROBERT COWARD

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: May 18, 2017

*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 appellant, Dean Coward, pled guilty to first degree murder and use of a handgun in the commission of a felony or crime of violence in 2000, and was subsequently sentenced to imprisonment. In 2010, Mr. Coward sought post-conviction relief in the Circuit Court for Baltimore City, and in 2011, after a hearing, his petition was denied. Mr. Coward then filed an application for leave to appeal, which was stricken by the circuit court as untimely filed.

Four years later, Mr. Coward filed a *pro se* motion pursuant to Rule 2-535(b) to revise the judgment striking his application for leave to appeal. As grounds, he claimed that the court had made a “jurisdictional mistake” because it had erroneously found that the leave to appeal period had begun on the date the post-conviction order was signed, rather than the date the clerk had entered the judgment on the docket. He also claimed that there was an “irregularity” because the clerk’s office had mailed the post-conviction order to the wrong address. On May 26, 2016, the court denied the motion, after which Mr. Coward timely filed this appeal.

Mr. Coward asks us to consider whether the circuit court erred by concluding that no jurisdictional mistake occurred in 2011 when his application for leave to appeal was struck as untimely filed, and by not finding an irregularity because the clerk’s office sent the post-conviction order to the wrong address. For the reasons that follow, we affirm the judgment of the circuit court denying Coward’s motion to revise the 2011 order.

FACTUAL AND PROCEDURAL HISTORY

In 2000, Mr. Coward pled guilty to first degree murder and use of a handgun in the commission of a felony or crime of violence and was sentenced to 30 years imprisonment, with all but twenty-five years suspended, for first-degree murder, and to a consecutive term of 20 years imprisonment, with all but five years suspended for the handgun offense. Mr. Coward later filed a petition for post-conviction relief, which was denied by the circuit court in a memorandum opinion and order dated June 15, 2011. The judgment was entered on the docket by the clerk's office on June 24, 2011.¹ Mr. Coward filed his *pro se* application for leave to appeal on July 20, 2011. On August 15, 2011, the circuit court issued an order requiring Mr. Coward to show cause within 15 days as to why his application for leave to appeal should not be struck as untimely filed. Apparently, he did not respond to the show cause order. On September 1, 2011, the circuit court, having found that Mr. Coward failed to show good cause why his application for leave to appeal should not be struck, “denied” his application. Mr. Coward did not appeal that order.² Instead, he

¹ Mr. Coward asserts that, in a letter dated July 11, 2011, his post-conviction counsel notified him that the court's opinion and order were mailed to an incorrect address and that he had 30 days to file his application for leave to appeal from the date of the order, June 15, 2011. Mr. Coward indicates that on July 13, 2011, his counsel conferred with him to determine whether he wanted to request that the court “re-date” the order due to the mailing error, however, he declined to move forward with this request because he was close to completing his *pro se* application for leave to appeal.

² An order striking an application for leave to appeal is an appealable judgment. *See Sullivan v. Insurance Comm’r*, 291 Md. 277, 284 (1981).

waited until December 2015 to file a motion to revise the judgment, the denial of which is the subject of this appeal.

DISCUSSION

Rule 2-535(b) provides that “[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 terms “fraud, mistake, or irregularity” as used in Rule 2-535(b) are “narrowly defined and are to be strictly applied.” *Early v. Early*, 338 Md. 639, 652 (1995). The movant must present clear and convincing evidence to establish fraud, mistake, or irregularity. *Thacker v. Hale*, 146 Md. App. 203, 217 (2002) (citing *Tandra S. v. Tyrone W.*, 336 Md. 303, 314 (1994)). Moreover, the party moving to set aside the enrolled judgment must establish that he or she “act[ed] with ordinary diligence and in good faith upon a meritorious cause of action or defense.” *Id.*

“We review the circuit court’s decision to deny a request to revise a judgment under the abuse of discretion standard.” *Pelletier v. Burson*, 213 Md. App. 284, 289 (2013). This Court will find an abuse of discretion only “in the extraordinary, exceptional, or most egregious case.” *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005).

A. No “Jurisdictional Error” or “Mistake”

Mr. Coward contends that the circuit court abused its discretion by denying his motion to revise the 2011 judgment striking his application for leave to appeal. In support of his argument that his application was filed timely, Mr. Coward cites Rule

8-204(b)(2)(A), which states: “Except as otherwise provided in subsection (b)(2)(B) of this Rule, the application shall be filed within 30 days after entry of the judgment or order from which the appeal is sought.” He asserts that the court’s calculation of the filing deadline from the date the order was signed, rather than from the date the order was entered on the docket, was a “jurisdictional mistake” that warrants revision pursuant to Rule 2-535(b).

In *Thacker, supra*, we examined “jurisdictional error” and explained that “only a lack of jurisdictional ‘power’ can justify relief from [an] enrolled judgment.” 146 Md. App. at 224. In that case, we stated:

Juridically, jurisdiction refers to two quite distinct concepts: (i) the *power* of a court to render a valid decree, and (ii) the *propriety* of granting the relief sought. ***It is only when the court lacks the power to render a decree, for example because the parties are not before the court, as being improperly served with process, or because the court is without authority to pass upon the subject matter involved in the dispute, that its decree is void.***

Id. at 225 (citations omitted and emphasis in original).

We agree with Mr. Coward that his application for leave to appeal was timely filed. The circuit court’s conclusion to the contrary in 2011, however, was not a mistake revisable under Rule 2-535(b). The docket entries reveal that the post-conviction order was entered by the clerk’s office on June 24, 2011 and Mr. Coward’s application for leave to appeal was filed on July 20, 2011. Mr. Coward does not assert that the court lacked subject matter jurisdiction to accept his application for leave to appeal, or dispute that it had personal jurisdiction over him. Thus, when we review his challenge as an attempt to establish

“mistake” or “jurisdictional error,” it falls short of establishing that the court lacked jurisdiction to enter the 2011 judgment striking his application for untimeliness. Rather, the court’s finding that the application was due thirty days from the date the order was signed was judicial error that Mr. Coward should have raised by filing a timely notice of appeal.

Further, even if we conclude that the court committed a “jurisdictional mistake,” Mr. Coward’s motion to revise the judgment would still not prevail. He did not respond to the August 24, 2011 show cause order regarding the timeliness of his application, and further, after his application for leave to appeal was struck as untimely filed, he did not appeal from that order. Instead, he waited four years before seeking to revise that judgment. From this perspective, we see no evidence from which we could conclude that Mr. Coward exercised the requisite level of diligence necessary to justify relief pursuant to Rule 2-535(b).

B. Not an “Irregularity”

Mr. Coward contends that the clerk’s office failed to adhere to the notice requirements set out in Rule 1-324 when it mailed the post-conviction order to the wrong address, and that this irregularity in procedure warrants revision of the post-conviction judgment. “‘Irregularity’ has a narrow judicial definition in Rule 2-535(b) jurisprudence.” *Thacker*, 146 Md. App. at 219 (citations omitted). An “irregularity” 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.’” *Davis v. Attorney General*, 187 Md. App. 110, 125 (2009) (internal quotations and citations omitted). “Irregularities warranting the exercise of revisory powers most often involve a judgment that resulted from a failure” to provide necessary notice to a party. *Thacker*, 146 Md. App. at 219-20 (citations omitted).

Mr. Coward acknowledges that he received notice of the post-conviction order through counsel before the filing deadline for his application for leave to appeal had lapsed, and further, that he had declined counsel’s offer to request that the court “re-date” the order due to the mailing error. Even if we conclude that the mailing error was an irregularity, Mr. Coward admits that he had received notice of the judgment and chose to proceed without asking the court to “re-date” the order to provide him with additional time in which to file his application for leave to appeal. Moreover, he waited more than four years to attack the judgment striking his application for leave to appeal. Unfortunately, a delay of this length undermines any assertions on Mr. Coward’s part that he acted with the ordinary diligence required to prevail on a Rule 2-535 motion.

In light of the foregoing, we hold that the circuit court did not abuse its discretion in denying Mr. Coward’s motion to revise the 2011 judgment striking his application for leave to appeal.

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