

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 950

September Term, 2016

AMERICAN EXPRESS BANK, FSB

v.

TERRENCE GROMAN

Meredith,
Kehoe,
Thieme, Raymond G., Jr.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Kehoe, J.

Filed: July 14, 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. *See* Md. Rule 1-104

In this appeal, American Express Bank, FSB takes aim at three orders of the Circuit Court for Montgomery County. The first, entered on January 24, 2014, dismissed American Express's collection action against Terrence Groman. The second, entered on March 25, 2016, vacated a judgment in favor of American Express that had been erroneously entered by the court on April 17, 2014. The third, entered on June 13, 2016, denied American Express's motion for reconsideration of the previous order. We think that the unusual facts giving rise to this sequence of orders are best explained through the use of an annotated timeline.

In 2012, Groman, together with a business entity called White Smile Global, entered into a credit card agreement with American Express. According to American Express, Groman defaulted on his obligations under the agreement.

On **August 19, 2013**, American Express filed a collection action against Groman in the Circuit Court for Montgomery County seeking \$60,724.34 in damages.

On **August 21, 2013**, the circuit court, per the Honorable John W. Debelius, III, entered a scheduling order that, among other things, set a status/pretrial hearing for **January 24, 2014**. A docket entry indicates that a copy of the order was mailed to Groman but there is no corresponding entry for American Express.

On January 24, neither party appeared at the hearing. As a sanction for American Express's failure to attend, Judge Debelius signed an order dismissing the case without

prejudice on the same day. There is a docket entry on **January 28, 2014**, stating that copies of this order were mailed, presumably to the parties.

Judge Debelius's order dismissing the case should have been the end of the story but it wasn't. Instead, the action became, for want of a better term, a zombie, dead in reality but treated by the parties and, for a time, by the circuit court, as if it were alive.

The first manifestation of this phenomenon occurred on **January 27, 2014**, when American Express's counsel filed a motion for summary judgment. On February 25 and March 20, 2014, the clerk's office wrote letters to American Express's counsel, requesting that counsel submit a draft order granting summary judgment. Eventually, American Express submitted an order and, on **April 17, 2014**, the circuit court granted the motion and judgment was entered accordingly. Thereafter, American Express filed writs of garnishment and undertook similar enforcement procedures.

On **March 1, 2016**, Groman filed a motion to vacate the judgment. Among the numerous grounds raised in the motion was the following "[t]he case was dismissed on 1/28/2014." Appended to the motion is an affidavit stating that a copy was sent by registered mail to American Express's counsel. American Express did not respond to the motion. On **March 30, 2016**, the court, the Hon. Ronald B. Rubin, presiding, granted the motion. Judge Rubin's order stated in pertinent part:

[Groman] has filed a motion requesting the court to vacate the judgment entered in this case on April 17, 2014. [American Express] has not filed an opposition to the motion to vacate.

The basis of the motion [to vacate] is that judgment should not have been entered because earlier in the case, on January 28, 2014, the court had dismissed the case, without prejudice, because no party appeared at the pretrial hearing. [American Express] never moved to set aside the dismissal of the case. This court, erroneously, granted [American Express's] motion for summary judgment on April 17, 2014, which was after the case had already been dismissed by the Administrative Judge. This was an error on the part of the court, which can be corrected at any time. Md. Rule 2-535(d).

[Groman's] motion to vacate the judgment is granted. The writs of garnishment are stricken.

On **April 26, 2016**, American Express filed a motion for reconsideration. It asserted, in pertinent part, that:

- (1) American Express had not received a copy of the August 21, 2013 scheduling order, nor notice of that order.
- (2) The circuit court's order granting the motion for summary judgment on April 17, 2014 indicated that the order dismissing the case was not in the court file at that time and "corroborat[es] the fact that the Order of Dismissal was not promulgated, much less received by [American Express], and was a fraud, mistake or irregularity through no fault of [American Express]."
- (3) Groman failed to move to vacate the judgment against him within 30 days of its entry.
- (4) "Beginning in June 2015, [Groman] began to file convoluted and nonsensical documents with the Court. *See* Exhibit B."

(5) “[American Express] was told by the Clerk that these ‘motions’ were not being docketed or ruled on by the Court. *See* Exhibit C.”

On **June 13, 2016**, the circuit court denied the motion for reconsideration. On **July 8, 2016**, American Express filed a notice of appeal.

The Parties’ Contentions

On appeal, American Express makes three arguments. First, it asserts that Judge Debelius abused his discretion by entering an order of dismissal because American Express failed to appear at the status hearing. Second, it contends that Judge Rubin erred in vacating the judgment entered in its favor in 2014. Third, it argues that Judge Rubin abused his discretion by denying the motion for reconsideration. According to American Express, the court failed to give sufficient weight to the fact that American Express had relied in good faith on the judgment for two years and that Groman had ample opportunity to inform the Court that a fraud, mistake or irregularity occurred, but did not do so until two years later.

In response, Groman contends that the order of dismissal was lawful and necessary, and the trial court’s vacating of the judgment was just.

Analysis

I.

American Express’s first two contentions are not before us.

The circuit court’s March 25, 2016 order vacating the judgment constituted a final judgment and was appealable at that time. *See, e.g., Estime v. King*, 196 Md. App. 296, 302 (2010) (“The striking of an enrolled judgment—including an order of dismissal—or the refusal to do so, is in the nature of a final judgment and is appealable.”); *Davis v. Attorney General*, 187 Md. App. 110, 120 (2009) (“[A]n order vacating an enrolled judgment is treated as a final judgment, and therefore is immediately appealable.”). As a general rule, an appeal must be filed within thirty days after the judgment is entered. *See* Md. Rule 8-202(a) (“Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.”).

The time for filing an appeal is extended by a post-judgment motion filed pursuant to Md. Rules 2-532 (motion for judgment notwithstanding the verdict), 2-533 (motion for a new trial), or 2-534 (motion to alter or amend a judgment). When such a motion is filed, the thirty day period begins to run when the motion is withdrawn or when the court rules on the motion. *See* Md. Rule 5-802(c). However, motions pursuant to Rules 5-232, -533, and -534 must be filed within ten days of the entry of judgment.

The circuit court vacated the judgment in American Express’s favor on March 30, 2016. American Express filed its motion for reconsideration on April 26, 2016, which was more than ten days after the court entered the order striking the judgment. Accordingly, this motion constituted a request for the circuit court to exercise its revisory

power pursuant to Rule 2-535. The filing of a Rule 2-535 motion does not stay the running of the thirty day appeal period. *Brethren Mutual Insurance Co. v. Suchoza*, 212 Md. App. 43, 63 (2013).

The circuit court denied American Express's motion for reconsideration on June 13, 2016. American Express filed its notice of appeal on July 7, 2016, which was less than thirty days after the court denied its motion to revise the judgment but was more than thirty days after the circuit court entered its order dismissing the judgment. Accordingly, our review is restricted to deciding whether the circuit court erred when it denied the motion for reconsideration. *Sydnor v. Hathaway*, 228 Md. App. 691, 707–08, *cert. denied*, 450 Md. 442 (2016) (“When a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion.”) (Internal citations and quotation marks omitted).

We review a circuit court's decision to deny a motion for reconsideration under the abuse of discretion standard:

A circuit court abuses its discretion when no reasonable person would take the view adopted by the court, or when the court acts without reference to any guiding rules or principles. Nevertheless, a court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case. Consequently, in appeals from the denial of a post-judgment motion, reversal is warranted in cases where there is both an error and a compelling reason to reconsider the underlying ruling.

Sydnor, 228 Md. App. at 708. (citations and quotation marks omitted).

II.

In its motion for reconsideration, American Express essentially asked the circuit court to do two things: (1) to strike its order granting Groman’s motion to vacate the 2014 judgment; and (2) to reinstate that judgment, which would necessarily involve vacating the court’s 2014 judgment dismissing the action. Unless the judgment entered by Judge Debelius is vacated, any relief granted to American Express would ultimately be futile. However, as we will explain, American Express has not presented a legally sufficient basis by which a court could vacate that judgment.

A court may vacate a void judgment at any time. *Cook v. Alexandria Nat. Bank*, 263 Md. 147, 153 (1971); *Finch v. LVNV Funding, LLC*, 212 Md. App. 748, 754–55 (2013). American Express offers no authority for the proposition that a judgment entered in error after an action has been dismissed is anything other than void. Therefore, the only possible way for American Express to prevail on its motion for reconsideration would have been to convince the circuit court that Judge Debelius’s decision to dismiss the action in 2014 was erroneous. Because of the passage of time, American Express can challenge that judgment only on the basis of fraud, mistake or irregularity. Md. Rule 2-535(b).

American Express does not assert that the proceedings before the circuit court were tainted by fraud or mistake. It does, however, contend that an irregularity occurred

because it never received notice of the status hearing. There are serious difficulties with this argument.

In the context of Rule 2-535, an “irregularity” is:

[T]he 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.

Pelletier v. Burson, 213 Md. App. 284, 290 (2013).

American Express is correct that the failure to mail a copy of an order to a party is an irregularity that can be corrected by a Rule 2-535(b) motion. *Gruss v. Gruss*, 123 Md. App. 311, 320 (1998). American Express’s argument, however, focuses on the wrong order. The docket entries are ambiguous as to whether a copy of the scheduling order was mailed to American Express. However, there are only two parties to this action and the relevant docket entry states that “copies” of Judge Debelius’s order dismissing the collection action were mailed by the clerk’s office. Docket entries are presumptively correct. *Estime v. King*, 196 Md. App. 296, 304–05 (2010). Moreover, there is a presumption that mail is received by the addressee. *See, e.g., Landover Assocs. Ltd. P’ship v. Fabricated Steel Prod., Inc.*, 35 Md. App. 673, 681 (1977). These presumptions are rebuttable but they can be rebutted only by evidence.

Md. Rule 2-311(d) states:

A motion or a response to a motion that is based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based.

American Express's motion for reconsideration was based upon the allegation of a fact that is not in the record, specifically, that its counsel had not received a copy of Judge Debelius's order dismissing the action. However, there was no affidavit or other evidence attached to the motion to support this contention.¹ The motion was therefore inadequate as a matter of law. *See Scully v. Tauber*, 138 Md. App. 423, 431 (2001) ("The motions court had no right to consider any fact set forth by appellee in his opposition due to appellee's failure to comply with Rule 2-311(d)."). In light of this deficiency, the circuit court was not in a position to grant any meaningful relief to American Express.

Furthermore, litigants have a duty "to monitor dockets for when pleadings and other documents are filed." *Estime v. King*, 196 Md. App. at 304. American Express's failure to monitor the docket undercuts its argument that it relied on the judgment in good faith. Had it monitored the docket, it would have discovered that the circuit court had dismissed the action and then taken steps on a timely basis to straighten out the problem. American

¹ There are three exhibits attached to American Express's motion for reconsideration. Exhibit A is a copy of the circuit court's order granting the motion for summary judgment. Exhibit B is a compilation of the "convoluted" documents that appellee later filed with the court. Exhibit C consists of docket entries that appellant included to demonstrate that the motions filed by appellee were never docketed or ruled on by the court. None of these documents shed any light on the critical issue of whether American Express had received notice that the action had been dismissed.

Express's attempt to hold Groman responsible for its failure to monitor the docket is unpersuasive—both parties have a duty to monitor the docket.

Finally, American Express is not assisted by its failure to respond to Groman's motion to vacate the judgment. This lapse isn't explained fully by the prolixity of the papers filed by Groman in this action. The very first line of his motion to vacate the judgment read "[t]he case was dismissed on 1/28/2014." It's hard to understand how American Express missed this.

In conclusion, American Express's motion for reconsideration failed to include an affidavit or other documentary evidence as required by Md. Rule 2-311(d) and was therefore legally inadequate. Additionally, the record indicates that American Express failed to monitor the docket and failed to act with appropriate diligence to protect its interests in this action. The circuit court did not err in denying the motion for reconsideration.

**The judgment of the Circuit Court for Montgomery County is affirmed.
Appellant to pay costs.**