

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1415, September Term 2016

IN RE EXPUNGEMENT PETITION OF
DOMINIC H.

No. 1416, September Term 2016

IN RE EXPUNGEMENT PETITION OF
JOSEPH D.

No. 1417, September Term 2016

IN RE EXPUNGEMENT PETITION OF
WALTER M.

No. 1419, September Term 2016

IN RE EXPUNGEMENT PETITION OF
ANTHONY C.

Meredith,
Berger,
Friedman,
JJ.

Opinion by Berger, J.

Filed: September 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 issue before us in this consolidated appeal is whether the Circuit Court for Baltimore City committed reversible error when it *sua sponte* vacated orders for expungement it had previously issued for each of the four appellants, Dominic H., Joseph D., Walter M., and Anthony C. (collectively, “the appellants”). The State concedes that the circuit court exceeded its lawful authority to revise enrolled orders of expungement when it vacated the orders for expungement, and we agree. Accordingly, for the reasons explained herein, we shall reverse.

FACTS AND PROCEEDINGS

The facts of the four cases that are consolidated in this appeal differ from one another, but all involve the identical legal issue with respect to the circuit court’s orders vacating its previous issued orders of expungement. In each case, the appellant filed a petition for expungement of his criminal record, which was granted by the circuit court.¹ Thereafter, in each of the four cases, more than thirty days after the entry of the order of expungement, the circuit court *sua sponte* vacated the expungement order² and summarily determined that expungement was barred by the expungement statute’s “unit rule.”³

¹ In Dominic H.’s case, the circuit court issued its order for expungement of records on June 14, 2016. In each of Joseph D.’s, Walter M.’s, and Anthony C.’s cases, the circuit court issued its order for expungement of records on April 5, 2016.

² In each of the four cases, the circuit court issued its order vacating the prior order granting expungement on July 28, 2016.

³ The “unit rule” provides that “[i]f a person is not entitled to expungement of one charge or conviction in a unit, the person is not entitled to expungement of any other charge or conviction in the unit.” Md. Code (2001, 2008 Repl. Vol), § 11-107(b)(1) of the Criminal Procedure Article (“CP”).

Each of the appellants noted a timely appeal. The appellants moved to consolidate the cases for appeal because each of the cases involved substantially similar facts and involved the same question of law. On December 5, 2016, this Court issued an order consolidating the cases for the purpose of this appeal.

DISCUSSION

The appellants argue that the circuit court’s orders vacating orders of expungement issued more than thirty days after the issuance of the orders for expungement exceeded the circuit court’s legal authority to revise an earlier, enrolled judgment. The State concedes error on the part of the circuit court, and we agree.

We review a circuit court’s exercise of revisory power for an abuse of discretion. *Mullaney v. Aude*, 126 Md. App. 639, 666 (1999). The circuit court’s revisory power is set forth in Md. Code (1974, 2013 Repl. Vol.), § 6-408 of the Courts and Judicial Proceedings Article (“CJ”), and in Md. Rule 2-535(a). CJ § 6-408 provides the following:

For a period of 30 days after the entry of a judgment, or thereafter pursuant to motion filed within that period, the court has revisory power and control over the judgment. After the expiration of that period the court has revisory power and control over the judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk’s office to perform a duty required by statute or rule.

Md. Rule 2-535(a) similarly provides that “[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could

have taken under Rule 2-534.”⁴ Rule 2-535(b) further 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.”

Indeed, we have explained that the circuit court holds broad revisory power over a judgment only during the 30 days following the entry of judgment:

The broad revisory power afforded the court by CJ section 6-408 and Rule 2-535(a) is for a period of 30 days after entry of judgment. Ordinarily, then, once judgment is entered, and if there is no postjudgment motion filed in the ensuing ten days, **the court may exercise its broad revisory power during the 30 days following entry of judgment, and not beyond.**

Mona v. Mona Elec. Grp., Inc., 176 Md. App. 672, 711 (2007) (emphasis supplied). In the absence of a specific statutory expansion of the court’s revisory power in a particular context,⁵ the circuit court’s authority to revise a judgment after 30 days is limited to

⁴ Md. Rule 2-534 provides:

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

⁵ There are specific statutory provisions for the continued revisory power in certain contexts, such as the modification of child support orders, *see* Md. Code (1984, 2012 Repl. Vol.), § 12-104 of the Family Law Article (“FL”), and the modification of an alimony

circumstances involving fraud, mistake, or irregularity. CJ § 6-408; Md. Rule 2-535. After 30 days, the judgment becomes enrolled and can no longer be generally revised. *See also Thacker v. Hale*, 146 Md. App. 203, 216-17 (2002) (“[A]fter a judgment becomes enrolled, which occurs 30 days after its entry, a court has no authority to revise that judgment unless it determines, in response to a motion under Rule 2–535(b), that the judgment was entered as a result of fraud, mistake, or irregularity. The evidence necessary to establish fraud, mistake, or irregularity must be clear and convincing.”) (internal citations omitted).

In each of the four cases consolidated in this appeal, the order for expungement became an enrolled judgment after the passage of 30 days following its entry. During the 30 days following the issuance of each order, no motion to alter or amend the judgment was filed, nor was a notice of appeal filed by the State. Furthermore, the circuit court’s orders vacating its prior orders for expungement were not based upon a “clerical mistake” which could be corrected at any time pursuant to Md. Rule 2-535(d). The State never filed a motion pursuant to Md. Rule 2-535 alleging that fraud, mistake, or irregularity had occurred, nor did the circuit court make a factual finding of fraud, mistake, or irregularity.

There is no provision under Maryland law that authorizes a circuit court to revise its judgment *sua sponte* more than 30 days after the entry of judgment. Accordingly, we hold that the circuit court abused its discretion by exceeding its statutory authority by issuing orders vacating the enrolled orders for expungement with respect to the four appellants. We, therefore, vacate the circuit court’s July 28, 2016 orders vacating its

award. FL § 11-107(b). No such specific expansion of the revisory power applies to enrolled orders of expungement.

previous orders of expungement and remand to the circuit court for the reinstatement of the orders of expungement.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. JULY 28, 2016 ORDERS VACATING ORDERS OF EXPUNGEMENT VACATED. CASE REMANDED FOR THE REINSTATEMENT OF ORDERS OF EXPUNGEMENT FOR EACH OF THE FOUR APPELLANTS. COSTS TO BE ASSESSED TO MAYOR AND CITY COUNCIL OF BALTIMORE.