

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0224

September Term, 2011

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DAVID KISSI

v.

MICHAEL RAY PEARSON

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Krauser, C.J.,  
Berger,  
Sharer, J. Frederick  
(Retired, Specially Assigned),

JJ.

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Opinion by Sharer, J.

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Filed: October 21, 2015

\*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.

David Kissi, appellant, proceeding in proper person, appeals from a decision of the Circuit Court for Prince George’s County denying his motion to reopen a legal malpractice action that he had filed against Michael Ray Pearson, appellee. On November 15, 2007, Kissi filed in the Circuit Court for Prince George’s County, a complaint for legal malpractice against Pearson. Pearson filed a motion to dismiss the complaint and, on January 11, 2008, the court granted that motion and dismissed the case with prejudice. On January 25, 2008, Kissi filed a motion for reconsideration on the ground that the circuit court had failed to hold a hearing on his opposition to the motion to dismiss despite his having requested one. The court granted Kissi’s motion for reconsideration, vacated its prior order dismissing Kissi’s legal malpractice action, and scheduled a hearing on Pearson’s motion to dismiss the legal malpractice action.

On June 13, 2008, attorney Ernest P. Francis entered his appearance on behalf of Kissi and represented him at the hearing on the motion to dismiss. In a written order entered on June 23, 2008, the circuit court dismissed Kissi’s legal malpractice action without prejudice and granted him leave to file an amended complaint within fourteen days. No amended complaint was filed within the prescribed time. A year later, two docket entries were made, one dated June 23, 2009 and another dated August 26, 2009, both of which indicate that the case was dismissed.

About a year and a half later, on January 24, 2011, Kissi filed a motion pursuant to Maryland Rule 2-535(b), seeking to “reopen” his legal malpractice action. The court

denied that motion on February 10, 2011. On March 13, 2011<sup>1</sup>, Kissi filed a motion to reconsider which was also denied by a written order dated March 31, 2011. Kissi filed a notice of appeal to this Court on April 11, 2011.

### **ISSUE PRESENTED**

Pursuant to our order of November 9, 2011, we shall consider only one issue, that is, whether the circuit court abused its discretion in denying Kissi’s motion to re-open his legal malpractice action. For the reasons set forth below, we shall affirm.

### **FACTUAL BACKGROUND**

This appeal has a long history that is well documented in various court records. The sole issue before us is procedural in nature and its resolution does not require a detailed recitation of the underlying facts. It is sufficient to note that Kissi filed a legal malpractice action against Pearson in which he maintained, among other things, that he paid Pearson and his law firm, Bennett and Bair, a \$30,000 retainer to represent him in a criminal action. Kissi alleged that Pearson and others in the law firm failed to defend him vigorously, failed to fully investigate information that could have absolved him of the crimes with which he was charged and convicted, and “ended up selling [him] to their government friends.” Kissi, who was sentenced to thirty months in a federal prison, claimed that he was entitled to two million dollars in damages and the return of the \$30,000 retainer.

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<sup>1</sup> We note that March 13, 2011 was a Sunday.

While Kissi was in federal prison, he was represented by another attorney, Ernest P. Francis, who entered his appearance on June 13, 2008. Francis represented Kissi at the June 13, 2008 hearing, at which the court granted Pearson’s motion to dismiss Kissi’s legal malpractice action without prejudice, with leave to file an amended complaint within fourteen days. Kissi asserts that, “without any advance notice,” Francis failed to file an amended complaint against Pearson within the fourteen-day period. Kissi claims he was unaware of Francis’s abandonment of his action until after he was released from prison in August 2009, and that the court should have considered these facts when deciding his motion to re-open the malpractice case. We note that the record does not indicate that Francis ever withdrew his appearance in the underlying case but, subsequent to June 13, 2008, all of the motions and other documents filed in the circuit court on Kissi’s behalf were filed in proper person.

### **STANDARD OF REVIEW**

We review a circuit court’s decision to deny a request to revise a final judgment under the abuse of discretion standard. *Pelletier v. Burson*, 213 Md. App. 284, 289 (2013). An abuse of discretion occurs when “no reasonable person would take the view adopted by the [trial] court,” or when the court acts “without reference to any guiding rules or principles.” *North v. North*, 102 Md. App. 1, 13-14 (1994).

### **DISCUSSION**

The docket entries indicate that Kissi’s legal malpractice case was dismissed on June 23, 2009, and again on August 29, 2009. In any event, it is clear from the record that Kissi took no action to file an amended complaint within the fourteen day period

allowed by the court and that a final judgment was eventually entered. *See* Md. Rule 2-322(c) (“If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action.”).

Kissi’s motion to re-open his legal malpractice action was filed long after the final judgment had been entered. That motion was based on Maryland Rule 2-535, which provides, in relevant part:

**(a) Generally.** On 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. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict 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.

**(b) Fraud, Mistake, Irregularity.** 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.

In considering a motion to revise a judgment under Rule 2-535(b), we are also guided by §6-408 of the Courts and Judicial Proceedings Article, which addresses the revisory power of a court over judgments, stating:

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.

As the Court of Appeals recognized in *Powell v. Breslin*, 430 Md. 52, 71 (2013), “[t]he overarching aim of Md. Rule 2-535(b) . . . is the preservation of the finality of

judgments, unless specific conditions are met.” “Maryland courts have narrowly defined and strictly applied the terms fraud, mistake, [and] irregularity, in order to ensure finality of judgments.” *Thacker v. Hale*, 146 Md. App. 203, 217 (2002)(internal quotation marks omitted). “The existence of fraud, mistake, or irregularity must be shown by ‘clear and convincing evidence.’” *Davis v. Attorney Gen.*, 187 Md. App. 110, 123-24 (2009)(quoting *Das v. Das*, 133 Md. App. 1, 18 (2000)).

Kissi does not suggest that fraud, mistake, or irregularity, as those terms are defined for purposes of Rule 2-535(b), were established in the proceedings below, and our review of the record reveals no evidence of any of those conditions so as to justify the exercise of revisory power in Kissi’s case. Fraud, under Rule 2-535(b), must be extrinsic and not intrinsic in nature. *Pelletier*, 213 Md. App. at 290 (relying on *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008)). Such fraud is defined as “an event that is ‘collateral to the issues tried in the case where the judgment is rendered[,]’” such as “‘whether the fraud prevented the actual dispute from being submitted to the fact finder at all.’” *Powell*, 430 Md. at 71 (quoting *Hresko v. Hresko*, 83 Md. App. 228, 232 (1990)). Kissi asserted that his attorney failed to give him a vigorous defense. There is no form of extrinsic fraud to be found in that assertion so as to justify the exercise of revisory power under Rule 2-535(b).

Mistake, as that term is used in Rule 2-535(b), is interpreted narrowly to mean jurisdictional error, such as when a judgment “‘has been entered in the absence of valid service of process; hence the court never obtains personal jurisdiction over a party.’” *Powell*, 430 Md. At 71 (quoting *Tandra S. v. Tyrone W.*, 336 Md. 303, 317 (1994)). *See*

also *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51 (2003)(mistake is limited to jurisdictional error, such as where the Court lacks the power to enter judgment). There is nothing in the record before us to suggest that the circuit court did not have jurisdiction over the parties or the subject matter of Kissi’s legal malpractice action.

Lastly, irregularity for purposes of Rule 2-535(b) is defined as “a failure to follow required procedure or process.” *Powell*, 430 Md. at 72 (relying on *Early v. Early*, 338 Md. 639, 653 (1995)). It 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 Gen.*, 187 Md. App. 110, 125 (2009)(internal quotation marks omitted). Kissi failed to allege or demonstrate by clear and convincing evidence any irregularity in this case.

Because there is absolutely no evidence of fraud, mistake, or irregularity, as those terms are defined for purposes of Md. Rule 2-535(b), the circuit court did not abuse its discretion in declining to exercise its revisory power and denying Kissi’s motion to “re-open” his legal malpractice action, which had been dismissed in 2009, or his subsequent motion for reconsideration that was based on the same argument.

**JUDGMENT OF THE CIRCUIT COURT FOR  
PRINCE GEORGE’S COUNTY AFFIRMED;  
COSTS TO BE PAID BY APPELLANT.**