

Circuit Court for Montgomery County
Case No. 172243FL

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 264

September Term, 2023

CRAIG N. BASH

v.

MARGARET C. BASH

Friedman,
Shaw,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: October 3, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Craig Bash (“Appellant”) and Margaret Bash (“Appellee”) were granted a judgment of absolute divorce in the Circuit Court for Baltimore County in 2022. Appellant filed a revisory motion in the circuit court that sought to correct a perceived error of the court’s calculation of the value of Appellant’s federal Department of Veterans Affairs (“VA”) disability compensation. The court denied Appellant’s motion.

Appellant then filed a second revisory motion to the same end, which the court also denied. Appellant filed the present appeal, which was timely only to the order denying the second revisory motion.

The question we address here is¹:

Is the second revisory order appealable?

As we explain below, due to the procedural posture of this case and this Court’s consideration of revisory motions under Rule 2-535, we conclude that the second revisory order is not appealable, and we therefore dismiss the appeal.

¹ Appellant’s questions presented, which we have reformatted from statements to questions, are:

1. [Was the] trial judge’s denial of [Appellant’s] Motion for Reconsideration of Order Entered 12/8/22 [] clearly erroneous and an abuse of the court’s discretion because, based upon the evidence at trial, the trial judge overstated the value of Appellant’s VA disability pension by \$1.1 million dollars by mistakenly “double-counting” Appellant’s special monthly compensation.
2. [Was the] trial court’s monetary award analysis [] clearly erroneous because the Court’s execution of [the] “step two” value analysis ignored the undisputed evidence introduced at trial and substituted it[]s own value, not supported by the evidence.

BACKGROUND

A. Divorce Proceedings

The parties were married in March 1984. Both parties are medical doctors and disabled veterans of the United States military, Appellant having served in the Air Force and Appellee in the Coast Guard. Additionally, both parties have a 100% disability rating from the VA and receive disability compensation.

In early 2016, the parties separated after Appellant moved out of the marital home. Appellee filed a complaint for absolute divorce and other relief in the Circuit Court for Montgomery County on November 16, 2020. Appellant filed his answer to the complaint on March 22, 2021, and subsequently filed a counterclaim for absolute divorce on March 25.

The circuit court held a four-day divorce hearing from June 13 through June 16, 2022. The primary focus of the hearing was the classification and distribution of marital property. The evidence presented at trial included financial statements for each party, a joint statement designating marital and non-marital property, an accountant's valuations of both parties' various pensions and benefits, and an expert's opinion on different types of military disability benefits.

There were two types of VA disability compensation discussed by the parties and Appellant’s experts. The first is scheduler² compensation, which is generally intended to replace potential earnings but are not tied to what an individual actually earns. The amount of the scheduler compensation awarded to a disabled veteran is determined by their disability rating, with greater payments for higher ratings. The second was special monthly compensation (“SMC”), which “is a benefit paid in addition to monthly disability compensation when a veteran suffers additional hardships above and beyond those contemplated by VA’s schedule for rating disabilities.” *Perciavalle v. Wilkie*, 32 Vet. App. 117, 118 n.1 (2019) (internal quotation omitted). Appellee receives scheduler compensation, and Appellant receives both scheduler compensation and SMC.

The circuit court entered a judgment of absolute divorce on October 18, 2022. The monetary award sheet completed by the court listed the value of Appellant’s VA disability pension as marital property worth \$1,830,036 and his SMC as non-marital property worth \$1,167,828.

² This type of compensation is referred to throughout the record as “scheduler,” “schedular,” “schedule,” and “scheduled” compensation. For consistency, we will use “scheduler” to describe this category of benefits because that is the term used by the parties in their briefs.

B. Post-Judgment Filings

On October 28, 2022, Appellant filed a motion to alter or amend judgment of absolute divorce pursuant to Maryland Rule 2-534 (the “first revisory motion”).³ Among other things, Appellant argued that the valuation of his VA disability pension—\$1,830,036— included the \$1,167,828 value of his SMC, with the remainder being his scheduler compensation. Because his scheduler compensation was marital property while his SMC was not, Appellant asserted that the court made a mistake in the monetary award sheet by including his SMC as both marital and non-marital property, thereby double counting it.⁴ Appellee opposed the first revisory motion, highlighting that Appellant did not rely on any legal authority to support his position, which only alleged factual errors.

The court denied the first revisory motion on December 8, 2022. The court stated that it had reviewed the record, including the expert’s valuation of Appellant’s VA disability pension, and stated that the yearly value listed in the accountant’s valuation

³ As relevant here, 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.

⁴ The monetary award worksheet provided the following valuations for Appellant’s assets: as marital property, a VA disability pension valued at \$1,830,036 and as non-marital property, SMC valued at \$1,167,828. Appellant’s position is that the correct valuation and designation of his assets is: as marital property, a VA disability pension including only his scheduler compensation valued at \$662,208 (*i.e.*, Appellant’s total VA disability pension minus his SMC) and as non-marital property, SMC valued at \$1,167,828.

comported with the court’s findings regarding the pension and other evidence presented regarding Appellant’s assets. As a result, the court concluded that it had correctly listed the values of Appellant’s assets.

Appellant filed a motion for reconsideration of the denial of his motion to alter or amend on December 19, 2022 (the “second revisory motion”). The motion, filed pursuant to the court’s revisory power and Maryland Rule 2-535,⁵ focused on the argument that the court improperly double counted Appellant’s SMC as both marital and non-marital property. Appellant also described his first revisory motion as being “unfairly critical towards the Court” and recognized that the testimony at trial regarding his assets and VA compensation in general was confusing. In support of the second revisory motion, Appellant filed an affidavit from the accounting expert that attempted to clarify his testimony at trial and the information contained in his valuation of Appellant’s VA compensation.

Appellee opposed the second revisory motion, characterizing it as “an impermissible attempt to alter the record before the trial court.” Specifically, she argued that the second revisory motion was filed 62 days after the judgment of absolute divorce in violation of Rule 2-534, which allows new evidence to only be considered within 10 days

⁵ Rule 2-535(a) provides in relevant part:

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.

of judgment. Further, Appellee pointed out that the second revisory motion was the first time Appellant had alleged that the testimony at trial was inaccurate and that at no point during the trial did Appellant attempt to clarify the testimony.

The court denied the second revisory motion on March 28, 2023. Appellant filed an appeal on April 11, 2023.

Appellee filed a motion to dismiss this appeal or, in the alternative, “to clarify which trial court order is the subject of this appeal.” This Court denied the motion to dismiss but granted the request to clarify, ordering that “the scope of review in this appeal is limited to whether the Circuit Court for Montgomery County abused its discretion in its March 2[8], 2023 Order,” which was the order denying the second revisory motion.

DISCUSSION

Appellant asserts that the circuit court abused its discretion in denying the second revisory motion. He reiterates the same arguments made in that motion and the first revisory motion, averring that the court double counted his SMC, thereby overstating the value of his disability benefits by \$1.1 million. Appellant contends that there was no evidence in the record to support the conclusion that the total value of his VA disability pension without the SMC was about \$1.8 million. Further, he asserts that the evidence and testimony of the various experts agreed that his SMC was separate from his scheduler benefits and that the judge’s questions throughout the trial suggested that he understood this distinction.

In contrast, Appellee contends that it was within the bounds of the circuit court's discretion to deny both of Appellant's post-judgment motions. Appellee also emphasizes that the merits of the monetary award worksheet are not at issue in this appeal, only whether the judge abused his discretion in denying the second revisory motion, which sought to revisit the first revisory motion, not the judgment of absolute divorce. Appellee argues that even if the merits of the underlying judgment were at issue, there was sufficient evidence to support the judge's findings and that regardless of any potential error in the valuations, the monetary award was equitable and therefore was not an abuse of discretion.

Both parties assert that the standard of review is abuse of discretion. *See Sydnor v. Hathaway*, 228 Md. App. 691, 708 (2016). This is the correct standard of review for revisory motions generally. However, the procedural history of this case puts it in a different posture on appeal and requires a closer assessment than the parties have afforded in their briefs regarding the procedures and principles of the Maryland Rules.

In *Pickett v. Noba, Inc.*, this Court described the various post-trial revisory motions of the Maryland Rules as follows:

After judgment in a court trial, a litigant can file one of the following post-trial motions: a motion for new trial under Md. Rule 2-533; a motion to alter or amend the judgment under Md. Rule 2-534; or a motion for the court to exercise its revisory power under Md. Rule 2-535.

114 Md. App. 552, 556 (1997), *aff'd on reconsideration*, 122 Md. App. 566, 570 (1998). Rule 2-533 and Rule 2-534 both require that a motion pursuant to those Rules be filed within 10 days of when the judgment was entered, although a court should treat any initial revisory motion filed within 10 days of the judgment as a Rule 2-533 or Rule 2-534 motion

regardless of how it is labeled. *Sieck v. Sieck*, 66 Md. App. 37, 43–44 (1986). A post-judgment motion filed within 10 days of the judgment stays the 30-day deadline for noting an appeal of the underlying judgment until the court enters an order disposing of the motion or it is withdrawn by the moving party. Md. Rule 8-202(c); *Estate of Vess*, 234 Md. App. 173, 194–95 (2017).

The second revisory motion, in contrast, is governed by Rule 2-535, which requires that the motion be filed within 30 days of judgment but does not stay the deadline for noting an appeal. *Leese v. Dep't of Lab., Licensing & Regul.*, 115 Md. App. 442, 445 (1997); Md. Rule 2-535(a). If the court has denied a first motion for reconsideration, a filing of a second revisory motion does not toll the running of time to file an appeal. *Johnson v. Francis*, 239 Md. App. 530, 541 (2018). Rule 8-202(c) permits motions filed within 10 days of an entry of judgment under Rules 2-534 and 2-535 to toll the time period for appeal as the court considers the motion; however, once a court has denied a motion for reconsideration, the second revisory motion will not toll the time to note a timely appeal. *Leese*, 115 Md. App. at 445.

Appellant filed the first revisory motion on October 28, 2022, 10 days after the judgment of absolute divorce was entered. This stayed the deadline for filing an appeal of the judgment of absolute divorce until the court ruled on the motion. The court did so on December 8, 2022. Appellant timely filed the second revisory motion on December 19, 2022; however, the second revisory motion did *not* stay the deadline for an appeal. Thus, Appellant had until January 9, 2023, to file a notice of appeal of the judgment of absolute

divorce and/or the denial of the first revisory motion.⁶ Appellant filed the notice of appeal on April 11, 2023. As a result, and as we clarified in the order on Appellee’s motion to dismiss, the only order that was timely appealed was the denial of the second revisory motion.

However, what both parties fail to mention in their briefs is that the denial of a second revisory motion is not appealable. In *Off. of People’s Couns. v. Advance Mobilehome Corp.*, we rejected the theory that a party could appeal the denial of an otherwise-timely second revisory motion. 75 Md. App. 39, 45–46 (1988). The appellees in *Advance Mobilehome* “reason[ed] that as long as their motion was filed within 30 days of the order denying Advance’s motion to alter or amend, they may file a second motion to alter or amend, challenging the denial.” *Id.* We disagreed, concluding that “[t]heir interpretation of [Rule] 2-535 . . . flies in the face of the import of the rule and the cases that have developed under that rule.” *Id.* at 46. We then explained that such an interpretation is contrary to the principles of finality of judgment and “would permit a succession of motions, each of which could challenge the denial of a refusal to revise, *ad infinitum.*” *Id.* Further, we stated that

[a]lthough the [appellees] contend that they filed a timely motion to revise the denial of [the first] motion to revise (and not an untimely motion to revise the original judgment), this distinction is illusory. What is the practical effect of allowing them to file a motion to revise the denial of a motion to revise? It effectively would allow them to attack an enrolled judgment on grounds

⁶ Rule 1-203(a)(1) commands “the last day of the period so computed is included unless: (1) it is a Saturday, Sunday, or holiday[.]” Therefore, the deadline for the second revisory motion fell on December 19, 2022, and the deadline for the appellant to file a notice of appeal was January 9, 2023.

other than fraud, mistake or irregularity, which is expressly forbidden by Rule 2-535(b).^[7]

Id. at 47–48.

We reiterated this principle in *Pickett*, stating that the “denial of [the] second motion to revise is not appealable because it is not a final judgment. A second motion to revise filed more than thirty days after the entry of judgment, even though within thirty days after the denial of the first motion, cannot be granted.”⁸ *Pickett*, 114 Md. App. at 560; *see also*

⁷ Rule 2-535(b) provides: “On motion of any party filed at any time, the court may exercise revisionary power and control over the judgment in case of fraud, mistake, or irregularity.” This is in contrast with Rule 2-535(a), which allows a party to assert any grounds for revision but must be filed within 30 days of the judgment. Rule 2-535(b) is not applicable to this case.

⁸ The Maryland Rules Commentary describes this outcome as follows:

The time for filing a motion to revise (if filed more than 10 days after the entry of judgment) and the time for filing an appeal both run concurrently from the entry of judgment. Thus, as a practical matter, *the filing of a motion to revise a judgment becomes the appeal* because, unless it is decided within 30 days, the appeal time on the original judgment will have expired. The moving party’s last attempt to win is directed to the trial court, instead of to [the Appellate Court.]

Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 753 (5th ed. 2019) (emphasis added) (citation to *Pickett* omitted). The Maryland Rules Commentary also cautions that:

the party pursuing revision of the judgment must obtain a ruling on the motion before expiration of the time for appeal if the party wishes both trial court and appellate court review of the judgment. Because this may be difficult, the motion to revise under Rule 2-535 is usually reserved for cases in which no appeal will be taken.

Id. at 730.

Leese v. Dep't of Lab., Licensing & Regul., 115 Md. App. 442, 445 (1997) (stating that a “second [revisory motion] did not extend the appeal time pursuant to Rule 8-202(c)” because to “interpret the rule in that manner would permit a party to extend the time for appeal *ad infinitum* based on the filing of successive motions within ten days after denial of the immediately preceding motion” (citing *Pickett*)).

CONCLUSION

The procedural posture of this case and this Court’s consideration of revisory motions under Rule 2-535 controls the outcome of this case. Because Appellant seeks review of the denial of a second revisory motion and failed to file a notice of appeal within 30 days of the denial of the first revisory order, we shall dismiss the appeal.⁹

APPEAL DISMISSED. COSTS TO BE PAID BY APPELLANT.

⁹ Appellant’s second revisory motion asserted that it sought to correct “new findings of fact” in the order denying the first revisory motion. These new findings do not save this appeal because Appellant sought to correct those errors through a second revisory motion, not in a timely appeal to this Court. In doing so, he precluded himself from challenging that order here. Further, even if we were to review the court’s denial for abuse of discretion, we would not find such abuse. The record before the circuit court was confusing, and it was the Appellant’s burden to present clear evidence to the court as to the value of his assets. He was entitled to request that the court revisit its monetary award decision once it became clear the court disagreed with the Appellant’s assessment of the evidence; however, the court was not required to grant such a request. *See Stuples v. Balt. City Police Dep’t*, 119 Md. App. 221, 232 (1998) (“[T]he ruling in issue does not have to have been right to survive so minimal and deferential a standard of review [as abuse of discretion].”).