

Circuit Court for Montgomery County
Case No. C-15-CV-23-003835

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 347

September Term, 2024

CORNELL EPPS

v.

WESBANCO BANK, INC.

Wells, C.J.,
Graeff,
Kehoe, Christopher B.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 27, 2024

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Cornell Epps, appellant, appeals from an order issued by the Circuit Court for Montgomery County denying his motion to vacate a confessed judgment that was entered against him, and in favor of WesBanco Bank, Inc., appellee. On appeal, he contends that the court erred in denying the motion to vacate because: (1) he was unaware that there was a pending case against him until he received the notice of confessed judgment, and (2) he had reached out to the attorneys for appellee to work out a payment plan but “no reasonable solutions were given.” For the reasons that follow, we shall affirm.

In September 2021, C Insurance, LLC executed and delivered to appellee a promissory note in the principal amount of \$26,635.00. Appellant also executed a Commercial Guaranty, guaranteeing the payment of that note. The note contained a confession of judgment provision. After C Insurance defaulted on the note in 2023, appellee, through counsel, filed a Complaint for Confessed Judgment against C Insurance and appellant. After the court granted an order for entry of judgment, appellant filed a timely motion to vacate the judgment on the grounds that: (1) he did not have advance notice that the action had been filed; (2) appellee had made no attempt to resolve matters out of court; and (3) the total that appellee claimed he owed was not correct. No exhibits or affidavits were attached to the motion. The court denied the motion to vacate without a hearing. This appeal followed.

In *Schlossberg v. Citizens Bank*, 341 Md. 650, 655 (1996), the Supreme Court of Maryland set forth the procedures to be followed when a motion to open, modify, or vacate a confessed judgment is filed.

Rule 2–611 governs the procedure for confessed judgments in Maryland. Judgment by confession may be entered by the circuit court clerk upon the filing of a complaint accompanied by the original or a copy of the instrument authorizing the confessed judgment and an affidavit specifying the amount due and stating the address of the defendant. Md. Rule 2–611(a). Upon entry of a judgment by confession, the clerk is required to notify the defendant of the entry of judgment and of the deadline for filing a motion to “open, modify or vacate” the judgment. Md. Rule 2–611(b).

If the defendant so moves, the circuit court must determine whether there is a “substantial and sufficient basis for an actual controversy as to the merits of the action.” Md. Rule 2–611(d). In other words, the court must determine whether the defendant has a potentially meritorious defense to the confessed judgment complaint. The court does not, however, decide the merits of the controversy at this stage. MARYLAND RULES COMMENTARY, at 466. If the court finds that a basis for a defense exists, the rule requires the court to order that the confessed judgment be opened, modified, or vacated so that the defendant can file a responsive pleading to the plaintiff’s complaint and the merits can be determined. Md. Rule 2–611(d).

Schlossberg, 341 Md. at 655–56.

In seeking to vacate a confessed judgment, the defendant carries the burden of showing that a meritorious defense exists, but the burden of proof is relatively low. *Gambo v. Bank of Md.*, 102 Md. App. 166, 185 (1994). Still, the defendant “must adduce evidence in support of his [or her] motion sufficient to persuade the fair and reasoned judgment of an ordinary [person] that there are substantial and sufficient grounds for an actual controversy as to the merits of the case.” *Stankovich v. Lehman*, 230 Md. 426, 432 (1963); *see also Garliss v. Key Fed. Sav. Bank*, 97 Md. App. 96, 104 (1993) (“One moving to strike a judgment by confession has the burden of presenting evidence satisfactorily supporting its purported defense[.]”).

On appeal, appellant first contends that the confessed judgment should have been vacated because he “[n]ever received any proper notice that a case was pending.”

However, pursuant to Maryland Rule 2-611, a defendant is not required to be notified of a confessed judgment action until the entry of judgment. And the record indicates that appellant was properly notified after the confessed judgment was entered, and that he filed a timely motion to vacate that judgment.

Appellant also asserts that he reached out to appellee’s counsel and attempted to work out a payment plan but that “no reasonable solutions were given.” However, nothing in the promissory note required appellee to attempt to negotiate a payment plan in the event of default before it could seek a confessed judgment.

Finally, although appellant does not specifically raise the issue on appeal, we note that, in his motion to vacate, appellant also alleged that the total amount appellee claimed was owed on the note was “not correct.” However, this conclusory statement was not made under oath and was not supported by affidavits or other exhibits. Thus appellant failed to satisfy his burden of proving to the court that substantial and sufficient grounds for an actual controversy existed.

Because appellant did not otherwise demonstrate that he had a meritorious defense to the confessed judgment, the court did not err in denying his motion to vacate that judgment. Consequently, we shall affirm.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**