

Circuit Court for Anne Arundel County
Case No. C-02-CV-20-000621

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 656

September Term, 2021

CINNAMON TRAIL PROPERTY, LLC

v.

BALTIMORE & ANNAPOLIS RR CO., *ET*
AL.

Arthur,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: November 17, 2022

*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.

Although a party may file serial post-judgment motions, the time for filing any post-judgment motion is still measured from the date of entry of final judgment pursuant to Rule 2-601 and, as a result, any post-judgment motion filed more than 30 days after the entry of final judgment is limited to those grounds permitted by Rule 2-535(b).

FACTS

Baltimore & Annapolis Railroad Co. (B&A) owns real property located at 440 Ritchie Highway in Severna Park. B&A was delinquent in its property taxes and, as a result, the property was offered at a tax sale, where the tax sale certificate was purchased by Cinnamon Trail Property, LLC. On February 25, 2020, Cinnamon Trail filed its complaint seeking to foreclose B&A's right of redemption. Cinnamon Trail's complaint complied with all legal requirements except that Cinnamon Trail failed to include a title searcher's affidavit. B&A did nothing. On February 4, 2021, Judge Pamela K. Alban of the Circuit Court for Anne Arundel County signed an order foreclosing B&A's right of redemption. Final judgment was entered on the circuit court's computer docket system the next day. On March 6, 2021, B&A filed a post-judgment motion, arguing that the lack of a title searcher's affidavit made Cinnamon Trail's complaint invalid. On the same date, B&A also tendered a check to Cinnamon Trail in the amount of \$61,000 to redeem the property. Cinnamon Trail returned B&A's check uncashed. On March 16, 2021, Cinnamon Trail moved to supplement the record to include the missing title searcher's affidavit. Judge Mark W. Crooks granted Cinnamon Trail's motion to supplement the record by order dated April 9, 2021. On April 15, 2021, Judge Alban denied B&A's motion to vacate the judgment as moot in light of Judge Crooks having granted the motion to correct the record.

On April 19, 2021, B&A filed a second post-judgment motion. Finally, on June 21, 2021, Judge Alban entered an order granting B&A's second post-judgment motion to alter or amend, vacating the judgment of February 5, 2021, and reinstating B&A's right to redeem the property. This appeal followed.

Thus, the important chronology is as follows:

February 5, 2021	Entry of Final Judgment in favor of Cinnamon Trail
March 6, 2021	B&A's Post-judgment Motion #1 filed
April 15, 2021	B&A's Post-judgment Motion #1 denied
April 19, 2021	B&A's Post-judgment Motion #2 filed
June 21, 2021	B&A's Post-judgment Motion #2 granted

DISCUSSION

This case forces us to consider the interplay between the Maryland Rules governing post-judgment motions in cases tried without a jury, Rules 2-534 and 2-535.

Rule 2-534 provides, in pertinent part:

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.

MD. R. 2-534.

Rule 2-535 provides, in pertinent 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.

* * *

- (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.

MD. R. 2-535(a), (b).

We distill three distinct temporal phases under these Rules. *First*, if a post-judgment motion is filed within 10 days after entry of final judgment, the post-judgment motion can be based on any ground—or no ground at all—and the trial court has nearly free reign to grant the motion and revise the judgment. MD. R. 2-534; MD. R. 8-202(c). In fact, given the breadth of the trial court’s discretion during this time period, appellate courts will affirm the grant of a motion to revise as not an abuse of discretion, even if the grounds on which the motion is granted are legally erroneous. *Md. Bd. of Nursing v. Nechay*, 347 Md. 396, 408 (1997). *Second*, if a post-judgment motion is filed 11 to 30 days after entry of final judgment, it may be based on any ground. MD. R. 2-535(a); MD. CODE, CTS. & JUD. PROC. (“CJ”) §6-408; *Platt v. Platt*, 302 Md. 9, 13 (1984).¹ Appellate review of a grant or denial of a revisory motion filed in this period is highly deferential. *Nechay*, 347 Md. at 408. *Third*, if a post-judgment motion is filed more than 30 days after entry of final judgment, it may only be filed on grounds of fraud, mistake, or irregularity. MD. R. 2-535(b); CJ §6-408;² *Canaj, Inc. v. Baker & Div. Phase III*, 391 Md. 374, 400 (2006). Those terms are defined narrowly in our case law and, on appeal, we review the decision to grant or deny a

¹ Rule 2-535(a) and the first sentence of CJ §6-408 are functionally identical and both permit a court to reopen within 30 days on any basis.

² Rule 2-535(b) and the second sentence of CJ §6-408 are functionally identical and both permit revision after 30 days only on the grounds of fraud, mistake, or irregularity.

motion under these grounds without deference to the trial court. *Facey v. Facey*, 249 Md. App. 584, 601, 604-05 (2021).

Although that much is clear, our caselaw is less clear about how these time periods are to be computed when, as here, there are serial post-judgment motions.³ Working from the plain language of the Rules, we hold that nothing about the denial of a first post-judgment motion operates to reset the date of entry of final judgment, which is determined by Rule 2-601. Thus, a second post-judgment motion is still governed by the 30-day limit running from the original date of entry of final judgment. *Off. of People’s Couns. v. Advance Mobilehome Corp.*, 75 Md. App. 39, 45 (1988); PAUL V. NIEMEYER, LINDA M. SCHUETT & JOYCE E. SMITHEY, MARYLAND RULES COMMENTARY 600 (4th ed. 2014). If a second motion is filed within 30 days, it may be brought on any ground, pursuant to Rule 2-535(a). But if a second motion is filed more than 30 days after entry of final judgment, it must be based on grounds of fraud, mistake, or irregularity pursuant to Rule 2-535(b) or it must, as a matter of law, be denied.⁴

³ B&A cites *Seidel v. Panella* to argue that in tax sale foreclosure proceedings, serial post-judgment motions may allow the trial court to retain its broad revisory powers under CJ § 6-408 and Rule 2-535(b). 81 Md. App. at 129 (“tax sale foreclosure proceedings are unique in many ways.”). We disagree. Rather than extending the trial court’s revisory powers, the *Seidel* Court’s holding concerned the *scope of appellate review* in a case in which the property owner appealed from denial of a second post-judgment motion. *Id.* at 128-30. We held that because of the unique nature of tax sale foreclosure proceedings, a broader scope of appellate review was warranted. *Id.* at 128-29. *Seidel*, however, does not hold that serial post-judgment motions extend the trial court’s revisory powers, and despite the unique nature of tax sale foreclosure proceedings, we decline to adopt such a rule here.

⁴ Despite B&A’s arguments, *Leese* is not to the contrary. *Leese v. Dep’t of Lab., Licensing & Regul.*, 115 Md. App. 442, 445-46 (1997). In *Leese*, this Court held that a trial court retains jurisdiction to review a second post-judgment motion. *Id.* at 446. *Leese* did

As noted above, final judgment was entered by the circuit court on February 5, 2021.⁵ B&A’s first post-judgment motion was filed on March 6, 2021.⁶ Thus, this first post-judgment motion was filed within 30 days after entry of judgment. As a result, it could be, and was, based on any ground. It was, however, denied, and that denial is not challenged. The second post-judgment motion was filed on April 19, 2021. As such, it was filed more than 30 days after the entry of judgment, which occurred on February 5, 2021. As a result, B&A’s second motion was limited to the grounds set forth in Rule 2-535(b), namely fraud, mistake, or irregularity.⁷ Moreover, each of these grounds is narrowly

not, however, discuss the grounds of that motion. That issue is decided in the *Office of People’s Counsel* case, however, wherein we held that if the second post-judgment motion is filed more than 30 days after entry of judgment, although the court may consider such a motion, it can only grant it if is based on the grounds of fraud, mistake, or irregularity. *Off. of People’s Couns.*, 75 Md. App. at 47.

⁵ “[R]egardless of the date a judgment was signed, the date of the judgment is the date that the clerk enters the judgment on the electronic case management system docket in accordance with section (b) of this Rule.” MD. R. 2-601(d).

⁶ Cinnamon Trail also argues that B&A is precluded from challenging the foreclosure judgment because it failed to pay its taxes and other charges before filing its motion to revise, which is a condition precedent under *Canaj, Inc. v. Baker & Div. Phase III*, 391 Md. 374, 396 (2006) (“[T]o challenge the foreclosure of the equity of redemption in a tax sale, the taxes and other relevant charges acknowledged to be due, either prior to the challenge or simultaneously with it, must, as a condition precedent, be paid.”). Because of our resolution of this case, we need not resolve the unaddressed factual question of whether B&A’s tender of \$61,000 by check was sufficient to satisfy this precondition.

⁷ There is an argument that, in tax sale foreclosure cases, the standards for revising a judgment are even narrower pursuant to MD. CODE, TAX-PROPERTY (“TP”) § 14-845(a) (“A court in the State may not reopen a judgment rendered in a tax sale foreclosure proceeding except on the ground of lack of jurisdiction or fraud in the conduct of the proceedings to foreclose”). Under our state Constitution, the Court of Appeals of Maryland and the Maryland General Assembly share concurrent power to create and modify rules of practice and procedure governing proceedings in the state’s courts. MD. CONST., art. IV, §18(a). When there is an actual conflict between the rules set forth by the two branches,

construed in our caselaw. That is, only extrinsic (not intrinsic) fraud, *see, e.g., Pelletier v. Burson*, 213 Md. App. 284, 290-91 (2013) (discussing extrinsic fraud); jurisdictional mistake, *see, e.g., Pickett v. Noba, Inc.*, 114 Md. App. 552, 558 (1997) (discussing jurisdictional mistake under MD. R. 2-535(b)); or significant procedural irregularities by the clerks of court, *see, e.g., Early v. Early*, 338 Md. 639 (1995) (discussing standard for irregularities under MD. R. 2-535(b)); *Estime v. King*, 196 Md. App. 296 (2010) (same) will be sufficient.

Here, we hold that the alleged defect in Cinnamon Trail’s complaint—the failure to provide an affidavit from the person who conducted the title search⁸—was, as a matter of law, not fraud, mistake, or irregularity, and therefore, not a sufficient basis to reopen the judgment under Rule 2-535(b). As a result, we hold that the circuit court erred as a matter of law in granting B&A’s second post-judgment motion and we reinstate the judgment entered February 5, 2021.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY IS
REVERSED. COSTS TO BE PAID BY
APPELLEE.**

we are instructed to apply the last-written. *James v. Butler*, 378 Md. 683, 692-702 (2003); *Johnson v. Swann*, 314 Md. 285, 289-90 (1988); *Schlick v. State*, 238 Md. App. 681, 691 (2018); 66 OP. ATT’Y GEN. 80 (May 14, 1981). Here, however, we discern no conflict, as the grounds for B&A’s second post-judgment motion were not within the grounds set forth under either the Rule or the statute.

⁸ The parties did excellent work researching and providing this Court with caselaw regarding failure to provide affidavits in other circumstances and for other purposes. Despite that we do not reach those issues, we thank them for their work.