

Circuit Court for Prince George's County
Case No. CAE21-09349

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1960

September Term, 2022

IN THE MATTER OF THELMA FLOYD

Reed,
Friedman,
Zic,

JJ.

Opinion by Reed, J.

Filed: February 5, 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).

The Circuit Court for Prince George’s County awarded guardianship of Ms. Thelma Floyd’s person to Ms. Karen Sylvester of the Prince George’s County Department of Family Services (“Department”) and guardianship of Ms. Floyd’s property to Mr. Timothy Leahy (an attorney appointed by the court). The Appellant, Ms. Sharon Bates (“Ms. Bates”), is Ms. Floyd’s sister. Ms. Bates appeals from the denial of a motion to set aside the guardianship order and to modify guardianship of Ms. Floyd’s person and property. Ms. Bates presents the following questions for our review, which we have rephrased:¹

- I. Did Ms. Bates, Appellant, timely file the notice of appeal?
- II. Did the court err in denying Ms. Bates’s motion to set aside the guardianship order and to modify guardianship?

For the reasons to follow, we shall affirm the judgment of the circuit court.

BACKGROUND

On August 10, 2021, an Associate County Attorney for Prince George’s County filed a petition for the appointment of a guardian of the person and property of Ms. Floyd

¹ Rephrased from:

- 1) Did the Court commit reversible error when it found:
 - a) Clear and convincing evidence that Thelma Floyd is a disabled person by statute, and appointing, Karen Sylvester, Director, Prince George[’]s County Office of Aging, Guardian of Thelma Floyd’s person; and
 - b) Preponderance of the evidence that Thelma Floyd is unable to care for her property and affairs, by statute, appointing, Timothy Leahy, Guardian of the property of a Thelma Floyd; and voiding the power of attorney, held by Appellant Sharon Bates,
- 2) Did the Court er[r] when it found lack of good cause to grant Appellant’s Motion to Set Aside Guardianship, and to Modify Guardianship?

(the “petition”). Ms. Floyd was 70 years old at the time that the petition was filed. The petition alleged that Ms. Floyd suffers from frontotemporal dementia, which causes Ms. Floyd to be unable to make or communicate decisions regarding her health and property. According to the petition, Ms. Bates stated that she had power of attorney over Ms. Floyd and that Ms. Bates “refuses to produce [Ms. Floyd] for examination by physician[,]” “refuses to provide the Department with the name of the primary care physician for [Ms. Floyd,]” and “refuses to provide a mailing address.” The petition further alleged “[u]pon information and belief” that Ms. Bates “may be financially exploiting [Ms. Floyd].”

On February 17, 2022, the court presided over the permanent guardianship hearing. At the hearing, the court questioned Ms. Bates about various financial transactions involving Ms. Floyd’s accounts: approximately \$18,000 withdrawn between March and April 2021, daily withdrawals of approximately \$1,000 at an ATM, and a \$400,000 transfer to a Merrill Lynch account that had Ms. Bates listed as a beneficiary. Ms. Bates denied having any knowledge of those transactions. Ms. Bates also testified that she had no knowledge about a reduction of more than \$20,000 from Ms. Floyd’s account balance which occurred during February and March 2021. Despite having power of attorney, Ms. Bates testified that she never checked the balances on Ms. Floyd’s financial accounts.

Moreover, the Associate County Attorney represented as follows:

[D]uring the course of the investigation by the Department, Ms. Floyd was not cared for. When . . . the Adult Protective Services worker[] would visit Ms. Floyd, she reported that Ms. Floyd wore unclean clothing, . . . she

did not take showers or baths[.] And a majority of the time there was no supervision throughout the day.

The court ruled that even if it believed Ms. Bates’s testimony as to her lack of knowledge about Ms. Floyd’s financial transactions, Ms. Bates was nevertheless derelict in her responsibilities with power of attorney. The court commented that if the court did not believe Ms. Bates testimony as to her lack of knowledge about Ms. Floyd’s financial transactions, then Ms. Bates was implicit in how the funds were used. The court also ruled that Ms. Bates was “derelict in ensuring that [Ms. Floyd] was properly cared for.” The court deemed Ms. Floyd a disabled person and appointed Ms. Sylvester as guardian of the person and Mr. Leahy as guardian of the property.

Additional facts will be included as they become relevant to the issues.

DISCUSSION

I.

We must first address the scope of our review. The Appellees argue that the appeal is untimely and should be dismissed. Under Maryland Rule 8-202(a), a notice of appeal must “be filed within 30 days after entry of the judgment or order from which the appeal is taken.” “Parties must file a Rule 2-535 motion to revise within thirty days of the judgment; in instances of fraud, mistake, or irregularity, or failure of an employee of the court or of the clerk’s office to perform a duty required by statute or rule, however, parties can file timely a Rule 2-535 motion more than thirty days after judgment.” *Pickett v. Noba, Inc.*, 122 Md. App. 566, 570-71 (1998) (citing Md. Code, CTS. & JUD. PROC. § 6-408). In *Pickett v. Noba, Inc.*, this Court recognized that when a party files a Rule 2-535 motion

within ten days of the entry of a judgment, the motion stays the deadline to file an appeal. 122 Md. App. at 570-71. However, if the motion “is filed more than ten days after the judgment, it does not stay the time for filing the appeal[.]” *Id.* at 571.

Here, on February 24, 2022, the court issued the orders that awarded guardianship of Ms. Floyd’s person and property to the Appellees. On July 26, 2022, Ms. Bates filed a revisory motion — under Md. Rule 2-535(b) — to set aside those guardianship orders. The court denied that motion in an order filed on December 13, 2022. Ms. Bates filed the notice of appeal on January 12, 2022. Because Ms. Bates’s revisory motion was filed approximately five months after the entry of the guardianship orders, the deadline to file an appeal from those orders was not stayed. As a result, Ms. Bates’s notice of appeal does not encompass those orders. However, the appeal of the court’s denial of Ms. Bates’s revisory motion was timely filed. Accordingly, our review is limited to whether the court erred in denying Ms. Bates’s revisory motion.

II.

Ms. Bates claims that the court erred when it denied Ms. Bates’s revisory motion and found a lack of good cause to set aside or modify the February 24, 2022, guardianship orders. To vacate or modify a judgment under Rule 2-535(b), a movant must establish the existence of fraud, mistake, or irregularity. These jurisdictional predicates are “narrowly defined and strictly applied” because of the strong countervailing interest in judicial finality. *Leadroot v. Leadroot*, 147 Md. App. 672, 683 (2002). “The burden of proof in establishing fraud, mistake, or irregularity is clear and convincing evidence.” *Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008). We “review the trial court’s decision regarding

the existence of fraud, mistake, or irregularity without deference.” *Facey v. Facey*, 249 Md. App. 584, 601 (2021).

Under Rule 2-535(b), mistake constitutes a “jurisdictional error, such as where the [c]ourt lacks the power to enter judgment.” *Green v. Ford Motor Credit Co.*, 152 Md. App. 32, 51 (2003). Irregularity refers to “a nonconformity of process or procedure,” and not a mere departure from truth or accuracy that could have been challenged at trial. *Davis v. Att’y Gen.*, 187 Md. App. 110, 125 (2009). And fraud entails extrinsic fraud committed on the court that “prevents the adversarial system from working at all,” rather than intrinsic fraud that occurred during the trial. *Das v. Das*, 133 Md. App. 1, 18-19 (2000).

In Ms. Bates’s revisory motion, Ms. Bates argued that there were four “legal deficiencies” that, according to Ms. Bates, warranted setting aside the guardianship orders. We address each of those alleged deficiencies in turn.

First, Ms. Bates claimed that the petition was fundamentally defective because it failed to comply with Md. Code, EST. & TRUSTS § 13-705(c), which requires a petition to “include signed and verified certificates of competency from the following health care professionals who have examined or evaluated the disabled person:

- (i) Two licensed physicians; or
- (ii) 1. One licensed physician; and
 - 2. A. One licensed psychologist;
 - B. One licensed certified social worker-clinical; or
 - C. One nurse practitioner.

Md. Code, EST. & TRUSTS § 13-705(c)(2). Moreover, “[a]n examination or evaluation by at least one of the health care professionals under [Md. Code, EST. & TRUSTS § 13-705(c)(2)] shall occur within 21 days before filing a petition for guardianship of a disabled person.” Md. Code, EST. & TRUSTS § 13-705(c)(3). In the revisory motion, Ms. Bates contended “[t]hat no physician[’]s certificate meeting the statutory requirements was attached to the Petition.”

Here, a physician’s certificate, dated June 17, 2021, was attached to the petition. In that certificate, Dr. Eric M. Jeffries indicated that he had diagnosed Ms. Floyd with moderate frontotemporal dementia. The petition also alleged that Ms. Bates refused to give the Department access to Ms. Floyd for examination by a physician. The petition stated that Ms. Bates refused to provide the name of Ms. Floyd’s primary care physician to the Department. Md. Rule 10-202(a)(3)(A) outlines the procedure for the court to follow under those circumstances:

If the petition is not accompanied by the required certificate and the petition alleges that the disabled person is residing with or under the control of a person who has refused to permit examination or evaluation by a physician, psychologist, licensed certified social worker-clinical, or nurse practitioner, and that the disabled person may be at risk unless a guardian is appointed, the court shall defer issuance of a show cause order. The court shall instead issue an order requiring that the person who has refused to permit the disabled person to be examined or evaluated appear personally on a date specified in the order and show cause why the disabled person should not be examined or evaluated. The order shall be personally served on that person and on the disabled person.

In accordance with that Rule, the court ordered Ms. Bates to appear before the court “and show cause why [Ms. Floyd] should not be examined for purposes of these proceedings[.]” On October 14, 2021, a show cause hearing was held, and the court

ordered “that the Pri[n]ce George’s County Department of Social Services shall be permitted to schedule an appointment for [Ms.] Floyd to be examined for purposes of these proceedings[.]” A physician’s certificate, dated November 8, 2021, was then filed with the court. In that certificate, Dr. John Daken diagnosed Ms. Floyd with “Major Neurocognitive Disorder (Dementia)[.]”

Second, Ms. Bates claimed that the petition was fundamentally defective because the Department failed to attach certain documents to the petition, namely: “the General Durable Power of Attorney, Statutory Limited Power of Attorney, the Last Will and Testament of Ms. Floyd and Ms. Floyd’s Revocable Living Trust[.]” According to Ms. Bates’s revisory motion, there was no “explanation offered as to why the documents were not attached to the Petition.” The petition stated as follows: “Less restrictive alternatives attempted, but have failed, are as follows: attempting to meet and communicate with [Ms. Bates].” More to the point, the petition informed the court that Ms. Bates “stated she has power of attorney over the alleged disabled” and that Ms. Bates failed to cooperate with the Department. In its ruling, the court addressed Ms. Bates and indicated that it was aware of Ms. Bates’s power of attorney:

[D]espite having the power of attorney, you certainly were derelict in ensuring that [Ms. Floyd] was properly cared for.

So having reached that conclusion, both to the financial responsibility, as well as the care of her person, I find that it is appropriate to skip the hierarchy and not appoint [Ms. Bates] as the guardian of the person or the property[.]

Third, Ms. Bates claims that her siblings were not served with the petition, the show cause order, or the notice to interested persons, in violation of Md. Rule 10-203(b)(2)-(c).

According to Ms. Bates, there is no indication that her five brothers — Steven, Bruce, William, Everett, and Eric² — “who have priority of appointment under relevant Guardianship statutes, received or were properly served with a copy of the Petition and the related Court Orders.” Even if Ms. Bates had standing to raise this claim on behalf of her siblings, reversal would be unwarranted. *Cf. In re Adoption/Guardianship of L.B.*, 229 Md. App. 566, 595 (2016) (recognizing that, “to have standing, a party must demonstrate an injury-in-fact, or an actual legal stake in the matter being adjudicated.”) (cleaned up).

As noted above, the petition stated that Ms. Bates told the Department that she had power of attorney, but Ms. Bates otherwise failed to cooperate with the Department’s attempts to gain more information about Ms. Floyd. Nevertheless, Ms. Floyd’s court-appointed counsel (Mr. Shelton Skolnick) filed an answer to the petition and designated all five of Ms. Floyd’s brothers as interested parties. At the permanent guardianship hearing, “two [of Ms. Bates’s] brothers [were] trying to call” into the hearing, and at the beginning of the hearing, Bruce confirmed that he was present at the hearing through teleconference.

Lastly, Ms. Bates’s revisory motion argued that there was no record of a jury trial request or waiver. According to Ms. Bates, the lack of a jury trial request or waiver violated Md. Rule 10-205. On February 9, 2022, the court-appointed attorney for Ms. Floyd filed

² For clarity, we refer to Ms. Floyd’s brothers by their first names because they share the same last name (Bates). We mean no disrespect.

an answer to the petition for guardianship and waived a jury trial. Indeed, the court acknowledged that jury trial waiver on the record.

For all these reasons, no fraud, mistake, or irregularity occurred under Rule 2-535(b). Furthermore, the Ms. Bates's alleged four legal deficiencies are without merit. The court did not err in denying Ms. Bates's motion to set aside the guardianship order and to modify guardianship.

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