Circuit Court for Montgomery County
Case No. 472329V

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 199

September Term, 2024

HSU CONTRACTING, LLC

v.

HOLTON-ARMS SCHOOL, INC., ET AL.

Berger,
Beachley,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: February 14, 2025

*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).

HSU Contracting, LLC ("HSU") filed a complaint in the Circuit Court for Montgomery County against the Holton-Arms School, Inc. ("Holton") alleging breach of contract, conversion, and other related claims. Holton filed a counter-complaint, also alleging breach of contract. After a fifteen-day bench trial, the circuit court awarded $2,579,366 to Holton on its breach of contract claim and $9,550 to HSU on its conversion claim. HSU noted an appeal, and this Court, with relatively minor modifications, affirmed the award. During the pendency of the appeal, HSU apparently learned that the trial judge and his wife had made a $100 donation to Holton in 2012. HSU filed a motion to vacate in the circuit court pursuant to Rule 2-535(b), alleging that the trial judge's failure to disclose the donation constituted an "irregularity" within the meaning of the Rule. The court denied HSU's motion without a hearing.

HSU noted this timely appeal and presents the following questions for our review:

1. When a judge has donated money to a party in a case before that judge, whether Rule 18-102.11 requires the judge to disclose the nature of his relationship, and/or recuse himself from the case.

2. Whether the [c]ircuit [c]ourt should have granted HSU's Rule 2-535(b) motion based on the post-trial discovery of disqualifying information.

3. Whether the [c]ircuit [c]ourt erred by denying HSU's Rule 2-535(b) motion to vacate the judgment without a hearing and without "an analysis of the relevant facts and circumstances that resulted in the exercise of discretion." *Maddox v. Stone*, 174 Md. App. 489, 502 (2007).

Because we discern no abuse of discretion, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 5, 2018, the parties entered into a contract for HSU to renovate one of Holton's classroom buildings and to upgrade Holton's HVAC system in all of its buildings.

Holton alleged that HSU did not substantially complete either the building renovation or the HVAC work on time, and terminated the contract.

HSU filed a complaint on September 11, 2019, against Holton and Capital Projects Management, a company hired by Holton to act as its project manager.[1] HSU alleged, *inter alia*, that Holton breached the contract by failing to pay HSU for work it had performed, and further alleged that Holton converted certain materials and tools belonging to HSU by not allowing HSU to enter the school grounds to retrieve the items after terminating the contract. Holton filed a counter-complaint alleging breach of contract against HSU for failing to complete the project and providing defective work.

After a fifteen-day trial that commenced in February 2022, the court issued a written opinion finding that HSU breached the contract, and awarded $2,579,366 in damages to Holton. The court also found that Holton converted certain property belonging to HSU and awarded $9,550 to HSU.

HSU noted an appeal from the judgment, primarily arguing that the court erred in permitting Holton's experts to testify and in its calculation of damages. We agreed that a portion of the damages calculation was erroneous and modified the award accordingly. *HSU Contracting, LLC v. Holton-Arms, Inc.*, No. 1707, Sept. Term 2022 (filed Sept. 28, 2023). We otherwise affirmed the judgment.

During the pendency of the first appeal, HSU claims that it discovered that the trial

[1] The trial court entered judgment in favor of Capital Projects Management at the close of HSU's case-in-chief. HSU did not appeal that determination.

judge had donated money to Holton in 2012.[2] HSU raised this issue in its petition for certiorari to the Supreme Court of Maryland; however, the Court declined to grant certiorari. On January 22, 2024, HSU filed a motion in the circuit court to vacate the judgment, arguing that the trial judge's failure to disclose the donation constituted an irregularity under Rule 2-535(b).[3] HSU also suggested that there may be a further relationship between the trial judge and Holton in addition to the donation. In response, Holton provided an affidavit from its Director of Development, Ann Kangas, who stated that her search of Holton's records indicated that the trial judge and his wife "made one gift of $100 in 2012 in memory of Pat Dooling, a former faculty member and parent. The gift was made to an endowed fund created in memory of Ms. Dooling." A request for donations had been made by Ms. Dooling's family in her obituary. Ms. Kangas further affirmed that the trial judge and his wife "have no relationship with Holton-Arms[.]" HSU did not submit any counter-affidavit.

The circuit court, in an order signed by a different judge, denied HSU's motion to vacate as "meritless." No evidentiary hearing was held on the motion. HSU thereafter noted this timely appeal.

[2] We note that HSU and "Mr. and Mrs. Walter Hsu" also donated money to Holton in 2012. Walter Hsu and his wife, Amber Hsu, founded HSU, and Amber Hsu is HSU's counsel. They are the parents of a former Holton student.

[3] Rule 2-535(b) reads: "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."

DISCUSSION

HSU argues that the trial judge was required under Rule 18-102.11 to disclose that he had made a $100 donation to Holton, and his failure to do so was an irregularity requiring vacation of the judgment. Holton responds that the trial judge's failure to disclose a single $100 donation made approximately ten years before trial does not constitute clear and convincing evidence of an irregularity. According to Holton, HSU's suggestion that there may be more of a relationship between the trial judge and Holton is "rank speculation."

We review a court's decision whether to grant a motion to vacate under Rule 2-535(b) in two steps: first, we review *de novo* whether there has been fraud, mistake, or irregularity; second, if fraud, mistake, or irregularity has been shown, we review a court's decision to grant or deny the motion for abuse of discretion. *Davis v. Attorney General*, 187 Md. App. 110, 124 (2009).

Under Rule 2-535(b), a court may revise a judgment at any time where there is fraud, mistake, or irregularity. The party requesting the court to exercise its revisory powers must establish the existence of fraud, mistake, or irregularity by clear and convincing evidence. *Velasquez v. Fuentes*, 262 Md. App. 215, 241 (2024). The term "irregularity" as used in Rule 2-535(b) means "the doing or not doing of that, in the conduct of a suit at law, which, conformable to the practice of the court, ought or ought not to be done[,]" or "a failure to follow required process or procedure." *Id.* at 242 (quoting *Early v. Early*, 338 Md. 639, 652 (1995)). "As a ground[] for revising an enrolled judgment, irregularity . . . has a very

narrow scope." *Id.* at 243 (alterations in original) (quoting *Tandra S. v. Tyrone W.*, 336 Md. 303, 318 (1994)).

Our research has not revealed any Maryland caselaw concerning whether a court's failure to disclose a possible ground for disqualification under Rule 18-102.11 can constitute an "irregularity" under Rule 2-535(b).[4] However, assuming *arguendo* that such a failure could constitute an irregularity, we nonetheless hold that the minor monetary contribution made by the trial judge or his wife to a scholarship fund named for a former Holton faculty member ten years prior to this trial would not require recusal, and therefore the court did not abuse its discretion in denying HSU's motion.[5] We explain.

Under Rule 18-102.11, part of the Maryland Code of Judicial Conduct, "[a] judge shall recuse in any proceeding in which the judge's impartiality might reasonably be questioned[.]" Rule 18-102.11(a). With certain exceptions, "[a] judge subject to disqualification under this Rule . . . may disclose on the record the basis of the judge's disqualification and may ask the parties and their attorneys to consider . . . whether to waive disqualification." Rule 18.102.11(c). Comment [4] to the Rule provides that "[a] judge

[4] At least one case from another jurisdiction suggests that such a failure to recuse would only be an "irregularity" where there is evidence of actual bias and not merely an appearance of impropriety. *See Tennant v. Marion Health Care Found., Inc.*, 459 S.E.2d 374, 387 (W. Va. 1995).

[5] In its reply to Holton's opposition to the motion to vacate, HSU alleged that the trial judge's wife worked with Ms. Dooling's husband at the University of Maryland "for the past 30 years." This allegation, which suggests that the donation may have been made by the trial judge's wife and was not made as a result of any direct affiliation with Holton, has not been raised on appeal.

should disclose on the record information that the judge believes the parties or their attorneys might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification." Nevertheless, "[t]here is a strong presumption in Maryland . . . that judges are impartial participants in the legal process[.]" *Matter of Russell*, 464 Md. 390, 403 (2019) (second alteration in original) (quoting *Jefferson-El v. State*, 330 Md. 99, 107 (1993)). When a party moves for recusal, that party "bears a heavy burden to overcome the presumption of impartiality." *Abrishamian v. Barbely*, 188 Md. App. 334, 344 (2009) (quoting *S. Easton Neighborhood Ass'n v. Town of Easton*, 387 Md. 468, 499 (2005)).

The test for determining whether there is an appearance of impropriety "is an objective one which assumes that a reasonable person knows and understands all the relevant facts." *Regan v. State Bd. of Chiropractic Examiners*, 355 Md. 397, 411 (1999) (emphasis omitted) (quoting *Boyd v. State*, 321 Md. 69, 86 (1990)). "[J]udges determine appearance of impropriety—not by what a straw poll of the only partly informed man-in-the-street would show—but by examining the record facts and the law, and deciding whether a reasonable person knowing and understanding all the relevant facts would recuse the judge." *Id.* (quoting *Boyd*, 321 Md. at 86).

We have uncovered no Maryland caselaw discussing whether a donation to a party creates an appearance of impropriety. Our courts have held that there is an appearance of impropriety where an arbitrator previously represented an expert witness's practice, *Parks v. Sombke*, 127 Md. App. 245, 251-53 (1999), and where a criminal defendant was a friend

of the judge's son, who created the forged driver's license at issue in the case, *In re Turney*, 311 Md. 246, 251-52 (1987). On the other hand, this Court has held that there is no appearance of impropriety where the judge's brother represented one of the parties more than a decade prior to trial, *Abrishamian*, 188 Md. App. at 343-45, or where the wife of a victim in a criminal case had been the judge's campaign manager for two weeks, *Cook v. State*, 35 Md. App. 430, 441 (1977).

Other courts have considered the necessity to recuse where the judge has made financial contributions to a party. The overwhelming consensus is that contributions to a university or educational institution generally do not mandate recusal. *See, e.g.*, *In re Disqualification of Enlow*, 75 N.E.3d 226, 227 (Ohio 2016) ("[W]hile parties occasionally argue that a judge's educational affiliation may provide a reasonable ground for questioning his impartiality in cases in which a party is an institution he attended, made financial contributions to, or is presently affiliated with in some capacity, such gambits have almost always proved unsuccessful." (quoting Richard E. Flamm, *Judicial Disqualification*, § 10.5, at 267-68 (2d ed. 2007))).

A number of cases involve a trial judge presiding over a case where one of the parties is a school the judge graduated from, including *Barnett v. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.*, 956 F.3d 1228 (10th Cir. 2020); *Enlow*, *supra*; *Roe v. St. Louis Univ.*, 746 F.3d 874 (8th Cir. 2014); *Lunde v. Helms*, 29 F.3d 367 (8th Cir. 1994); and *Easley v. Univ. of Mich. Bd. of Regents*, 906 F.2d 1143 (6th Cir. 1990). In several cases, the judge not only donated money to the university, but also taught classes at the

university. *Roe*, 746 F.3d 874; *Lunde*, 29 F.3d 367; *Wu v. Thomas*, 996 F.2d 271 (11th Cir. 1993). In all of these cases, the courts concluded that the trial judges' connections to the universities would not cause a reasonable observer to question the judges' impartiality. In *Roe*, the court concluded that "[a]lumni connections are not a reasonable basis for questioning a judge's impartiality, *even if alumni contribute financially* or participate in educational activities." 746 F.3d at 886 (emphasis added).

In *Enlow*, Bradley University sought to disqualify the trial judge assigned to preside over Kent State University's tortious interference of contract suit against Bradley related to hiring Kent State's basketball coach. 75 N.E.3d at 1235. Despite the trial judge's affidavit that confirmed his donations to Kent State's athletics program and attendance at their basketball games for "many years," the Supreme Court of Ohio held that "no reasonable or objective observer would question [the trial judge's] impartiality merely because he has contributed to the athletic program." *Id.* at 1236.

In the present case, the only connection HSU could point to between the trial judge and Holton is a single $100 donation to a scholarship fund made nearly ten years prior to trial. We readily conclude that this isolated and relatively minor connection, without more, would not lead a reasonable person to question the trial judge's impartiality in this matter. HSU's assertions that there may have been additional donations in other years or some further relationship between Holton and the trial judge are mere conjecture. Many judges are active members of their communities, and judges or their family members may sometimes have tangential connections to the parties and witnesses involved in the

litigation. Whether a particular connection mandates recusal must be decided on a case-by-case basis. In this case, because a reasonable person would not question the trial judge's impartiality based on his donation to Holton, recusal would not be required. Therefore, the circuit court did not abuse its discretion in denying HSU's motion to vacate under Rule 2-535.

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