

Circuit Court for Prince George's County
Case No. CAD06-26267

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2266

September Term, 2017

STARSHA SEWELL

v.

JOHN HOWARD

Graeff,
Shaw Geter,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon. J.

Filed: August 31, 2018

* 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.

By order docketed July 29, 2014, Prince George’s County Circuit Court Judge John P. Davey: 1) granted sole legal and physical custody of John Howard, Jr. (born 2006) and Sean Sewell (born 2008) (“the children”), to their natural father, John Howard, Sr. (“Father”); 2) denied the children’s natural mother, Starsha Sewell (“Mother”) visitation; and 3) ordered Mother to pay child support to Father.

In November 2017, following the circuit court’s denial of numerous of Mother’s “requests for relief of judgment,” Mother, *pro-se*, filed a motion for emergency and expedited relief in which she requested that the court rescind its July 29, 2014 order. In that motion, she asserted that the circuit court lacked jurisdiction to divest her of custody of the children because appeals were pending in state and federal appellate courts at the time the circuit court conducted its July 14, 2014 hearing that resulted in the order docketed on July 29, 2014.

After a hearing on January 11, 2018, Judge Davey, treating Mother’s most recent motion as a request for the court to invoke its revisory power pursuant to Maryland Rule 2-535(b), denied the motion after finding that Mother had failed to demonstrate fraud, mistake, or irregularity. Judge Davey also ruled that he had jurisdiction to modify custody of the children on July 14, 2014, the date of the custody hearing. On January 18, 2018, the court then issued an order (docketed on January 26, 2018) denying Mother’s motion for emergency and expedited relief.

Mother again acting *pro-se*, noted an appeal. She phrased the questions presented as following:

1. Whether the Circuit Court's ruling on custody before Judge's A.M. Chapdelaine and John P. Davey were in excess of the court's jurisdiction and thus reviewable under appeal under MD 2-535(b), due to the grave error of the former Clerk of the Court of Special Appeals, who erred in the transmission of this case to the PG County Circuit Court in violation of the Federal Remand of this action to the Court of Special Appeals by the United States District Court for the District of Maryland?

2. Whether the PG County Police, Judge John Davey et al. engage in unlawful judicial activism upon utilizing the prestige of their law enforcements posit[i]ons to engage in organized crime, upon displacing two of the Appellants Minor children as an act of whistleblower reprisal, upon violating Judge Motz remand and Judge Zarnoch Vacating of their intervention in CAD-06-26267 in violation of Maryland Code 2013 Corporations and Associations 1-405 a (1) and (2), upon advancing the interest of Fidelity National Financial (Former Client of Judge Davey's law firm, where he previously served as Managing Director, the Maryland Mortgage Task Force, David Wanger [former attorney for Mr. Howard] and John Howard who engaged in extrinsic fraud on the PG Circuit Court?

3. Whether the Court of Special Appeals Grave Error, can be corrected expeditiously to return the Appellant's children, and to vacate the writ, and to make the Appellant and her minor children whole, for the various injustices endured in the areas of career, legal, housing, and employment due to the organized crime of the State employee[s] who conspired with Federal Officials to violate State and Federal orders that noted that the PG County Circuit Court did not consider the best interest of the children from 2012; on the basis that they exuded this exact same fact pattern, upon aiding and abetting Detective Jennifer Walker-Rio John Howard to use State and Federal resources/appropriations to falsely accuse, arrest and displace the Appellant's children simply because she violated the COMAR during the sex assault case: Detective Walker never visited any of the crime scenes within 24 hours as was required by State Law; hence she framed the protective parent Starsha Sewell, via false accusations in violation of State and Federal Orders on March 7, 2014?

For reasons explained below, we shall rephrase the issue that is actually presented in this appeal as follows: Did Judge Davey abuse his discretion when he ruled: 1) that he did have jurisdiction in July 2014, to decide the custody, visitation and child support issues

that were before him; and 2) that Mother had failed to prove that the order that was docketed on July 29, 2014 should be set aside due to fraud, mistake or irregularity.

I.

PRELIMINARY MATTERS

Most of Mother’s brief is taken up by arguments based on allegations of “fact” that are not supported by the record. Mother even includes an “affidavit” in her brief in which she swears to various facts. That affidavit, however, was not presented to the circuit court and will be disregarded. More importantly, much of Mother’s brief is almost impossible to understand.¹ For example, under the heading “Statement of the Facts,” the first two paragraphs of appellant’s brief read:

On July 15, 2014, the United States Court of Appeals For the Fourth Circuit, affirmed the Federal Remand of this action to the Court of Special Appeals, as was so ordered by Judge J.F. Motz in E.1-E.3. See E.4. and E.5. Upon, receiving a material change in this action from the United States Court of Appeals, which affirmed the Federal Remand of this action to the Court of Special Appeals; the Appellant filed several motions for relief for four years under MD Rule 2-535(B) Fraud, Mistake, Irregularity seeking revisory power of the order that Judge Davey issued in the commission of the PG County Police, Baltimore Field Office of the Federal Bureau of

¹ Aside from being very difficult to understand, Mother’s brief cites no case law in support of her primary assertion, which is that the circuit court, on July 14, 2014, did not have jurisdiction to decide child custody or child support issues. “On this basis alone, we could reject [her] contention.” *Ubom v. SunTrust Bank*, 198 Md. App. 278, 285 (2011). See also *Marquis v. Marquis*, 175 Md. App. 734, 758 (2007) (quoting *Sodergren v. Johns Hopkins Univ. Applied Physics Lab.*, 138 Md. App. 686, 707 (2001)) (“It is not our function to seek out the law in support of a party’s appellate contentions.”). Nevertheless, although “dismissal may be an appropriate sanction, whether to employ it is a matter left to the exercise of this Court’s discretion.” *Estepes Elec. & Petroleum Co. v. Sager*, 67 Md. App. 649, 657 (1986). Because this matter involves custody of minor children whose best interests must be considered, we will exercise our discretion to consider Mother’s claim.

Investigations, and collect members of the Maryland Mortgage Task Force hate crimes against me and my children as an act of whistleblower reprisal.

These agencies comprising of the Maryland Mortgage Task [F]orce, which was created in violation of Executive Order 13519, and has collectively served as a threat to the financial economic stability and property ownership of Marylander's who are State Tax payers, and United States Citizens. This illegal task force along with State officials who partook in the organized crime group in violation of Maryland Code 2013 Corporations and Associations 1-405a (1) and (2); with malicious intent to conceal the illegal flip of my property and my parental rights via false accusations in violation of MD Rule 3-704. These individuals aided and abetted the Appellee with a Parental Abduction using National Missing and Exploited, Fox 5, News 9, and ABC, they blasted my identity and my relatives identity via social media on various platforms such as Facebook, Google, and Twitter. They coordinated with various Non-Profit Agencies such as Justice for Children, which was located in Texas, with a field office in Washington, DC; which collected and gathered all of my pertinent information regarding my case; and closed. The Former Director Eileen King, betrayed my children with malicious intent to engage in organized crime with the Baltimore Federal Bureau of Investigation, who provided her as a point of contact in 2010, when they falsely presented themselves as an entity who accepted my complaint for review/investigation.

II.

BACKGROUND

In reciting the pertinent history of this matter prior to 2012, we rely primarily on the factual background set forth in an unreported opinion in a previous appeal relating to custody of Mother's children² that was authored by the Honorable Robert Zarnoch, writing for a panel of this Court in *Starsha Sewell v. John Howard, Sr.*, No. 2236, September Term 2011 (filed August 3, 2012 ("*Sewell I*")).

² Judge Zarnoch noted in *Sewell I* that it deciphered Mother's contentions as set forth in her brief, "[n]ot without some difficulty." *Sewell I*, slip op. at 6.

Mother and Father are the natural parents of John and Sean. In 2007, (at which time Sean was not yet born) the Prince George's County Circuit Court awarded primary physical custody of John to Mother and joint legal custody of that child to Mother and Father, with reasonable visitation to Father on alternate weekends. The Court also set Father's child support obligation.

In 2010, Mother alleged that Father and his adoptive son were sexually abusing/molesting John and Sean. The Prince George's County Department of Social Services ("the Department") opened an investigation. Following that investigation, the Department closed the matter, finding no safety concerns.

In 2011, Mother filed a petition to modify custody and visitation on the ground that Father was a person of interest in a police investigation into sexual assault of the children. The court entered a *pendente lite* order granting Father only supervised visitation.

Following a hearing on Mother's custody and visitation modification petition, the court found no evidence that Father had sexually abused the children. The court denied Mother's modification petition and awarded visitation to Father, so long as the children were not left unsupervised with Father's adoptive son, who was found possibly to have engaged in inappropriate sexual behavior with the children.

Mother filed a motion to alter or amend the court's visitation order. Before the court ruled on Mother's motion, Father filed a petition for contempt, stating that Mother refused to allow him any contact with the children. At a hearing that followed, Mother admitted she had not complied with the court's visitation order. She claimed she did so because she

was concerned for the safety of the children. Emphasizing that the Department had no safety concerns about the children, the court found Mother in contempt of its order, denied her motion to alter or amend, and ordered “make-up” visitation time to Father.

Mother continued to refuse to comply with the court’s visitation orders. As a result, Father filed a motion to modify custody and child support, asserting that Mother’s non-compliance and continued allegations of sexual abuse were harmful to the children and interfered with his relationship with them. Father also filed a motion requesting that Mother be held in contempt.

Mother did not appear at the hearing set to consider Father’s motions. In her absence, the Honorable A. Michael Chapdelaine awarded temporary custody of the children to Father, authorized law enforcement officers to assist Father in obtaining custody, ordered that Mother’s access to the children be limited to telephone calls, and suspended Father’s child support obligations pending further court order.

Mother, *pro se*, appealed the circuit court’s order, excepting to the court’s decision finding her in contempt and awarding temporary custody to Father without proper notice to her. In *Sewell I*, a panel of this court affirmed the contempt finding by Judge Chapdelaine but vacated the custody modification order, on the ground that Mother had not received adequate notice that the issue was to be considered by the court.³

³ After the mandate in *Sewell I* was filed, the Court of Appeals dismissed Mother’s petition for a *writ of certiorari* on March 28, 2016 because the petition was filed more than three years too late. On May 26, 2016, the Court of Appeals also denied a motion filed by Mother that she called a “MD Rule 8-207 Expedited Appeal and Motion to Vacate, Alter or Amend the Court of Appeals Order Dated March 28, 2016. . . .”

Days after the August 3, 2012 filing of Judge Zarnoch’s opinion in *Sewell I*, Mother filed a motion for relief of judgment in the Court of Special Appeals. Therein, she claimed she had been:

illegally held in contempt, by the [C]ourt of [S]pecial [A]ppeals; and the [c]ircuit court has abused its discretion in its application of the law, based off a decision of the Department of Social Services who engaged in Conspiracy pursuant to 923 18 U.S.C. 371, by intentionally converting a criminal law matter into a family law matter as demonstrated by ‘new evidence’ which exists but could not have been discovered by due diligence in time to move. . . for a new trial at the circuit court level; and could not be raised during oral argument, because the Court of Special Appeals violated its own administrative order and did not grant the appellants request.

She further claimed in her motion for relief of judgment that the Department had not acted in the best interest of her children in its sexual abuse investigation but instead acted in the best interest of its own staff, which, according to Mother, engaged in conspiracy and corruption. This Court denied Mother’s motion three days after it was filed.

Shortly after she filed her motion for relief of judgment in this Court, Mother filed, in the U.S. District Court for the District of Maryland, a “notice of removal.” She claimed that removal was appropriate inasmuch as her civil rights had been violated because she had been “illegally held in contempt” by the Court of Special Appeals, and that the circuit court had abused its discretion in its application of the law.

On September 13, 2012, the case was removed, by the federal court, to the U.S. District Court for Maryland. Only four days later, on September 17, 2012, United States District Court Judge J. Frederick Motz filed an order reading, in material part, as follows:

The above-captioned case was removed to this court from the Court of Special Appeals of Maryland on September 13, 2012. ECF No. 1. The action concerns a child custody issue with both domestic and criminal case aspects. *Id.*

Removal of this case is improper and it must be remanded. Under 28 U.S.C. § 1441(a), only actions “brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). To the extent the underlying case concerns child custody or parental rights issues, this court does not have original subject matter jurisdiction. *See Raftery v. Scott*, 756 F.2d 335, 343 (4th Cir. 1985) (domestic relations exception to federal courts’ jurisdiction based on idea that state has a stronger more direct interest); *Wasserman v. Wasserman*, 671 F.2d 832 (4th Cir. 1982) (diversity jurisdiction does not include power to grant divorces, determine alimony or support obligations, or decide child custody rights). To the extent the underlying case concerns criminal matters, it is not subject to removal because 28 U.S.C. § 1441 applies only to civil actions.

Accordingly, it is this 17th day of September, 2012, by the United States District Court for the District of Maryland, hereby ORDERED that:

* * *

3. The case IS REMANDED to the Court of Special Appeals of Maryland;

4. The Clerk SHALL TRANSMIT the record to the Clerk for the Court of Special Appeals of Maryland[.]

* * *

Mother then appealed the District Court’s order of dismissal to the United States Court of Appeals for the Fourth Circuit.

The Court of Special Appeals, on October 11, 2012, after receiving the dismissal order from the United States District Court for Maryland, issued its mandate remanding

the case to the Circuit Court for Prince George’s County. The mandate read, in relevant part:

August 3, 2012: Judgment affirmed in part and vacated in part. Case remanded for further proceedings not inconsistent with this opinion; child custody and support order to remain in force and effect as a *pendente lite* order pending further order of the circuit court.

On January 15, 2014, Father filed a motion for modification of custody, alleging that Mother had absconded with the children and that a criminal warrant had been issued for her arrest in Prince George’s County. Father sought full legal and physical custody of the children on the ground that Mother was not fit to handle the responsibilities of custodial parenthood. He further sought modification of his child support obligation.

Judge Davey heard argument and considered evidence concerning Father’s motion on July 14, 2014. Preliminarily, Mother, who at that time was represented by counsel, moved to dismiss Father’s motion based on the fact that she had previously filed a notice of removal to the U.S. District Court, which she claimed divested the circuit court of jurisdiction inasmuch as she had appealed Judge Motz’s order in which the court ruled that the United States District Court for Maryland had no jurisdiction. Judge Davey ruled that the federal court had no jurisdiction or control over custody matters.⁴

Also on July 14, 2014, Mother filed another notice of removal alleging, *inter alia*, that in light of her appeal to this Court in *Sewell I*, the circuit court, did not have jurisdiction

⁴ Only pages 1 through 31 of the transcript of the July 14, 2014 hearing were made part of the record filed in this appeal. In ascertaining what occurred at the hearing, we rely on Judge Davey’s written order.

when it awarded temporary custody of the children to Father. She further alleged that the circuit court had retaliated against her because she had claimed that the circuit court abused its discretion and because the court exhibited racial prejudice toward her.

On July 15, 2014, the United States Court of Appeals for the Fourth Circuit, in a *per curiam* opinion, affirmed Judge Motz’s “no jurisdiction” ruling.

On July 25, 2014, the U.S. District Court for Maryland issued an order denying Mother’s second attempt to remove the custody matter to the U.S. District Court. That court, once again, explained that it did not have subject matter jurisdiction over this civil domestic relations proceedings. In addition, the court continued, Mother’s attempt “to insert federal issues into this case by alluding to constitutional provisions and claiming discriminatory practice without any factual support” did not “serve to convert a state domestic relations proceeding into a federal case.”

By written order docketed on July 29, 2014, Judge Davey granted Father’s motion for modification of custody and child support and awarded Father sole legal and physical custody of the children. Mother’s motion for visitation was denied, and Mother was ordered to pay child support to Father, commencing September 1, 2014. No appeal was filed from that order.

On January 7, 2015, Mother filed a motion for relief of judgment arguing that the circuit court did not have jurisdiction to issue the order docketed on July 29, 2014 because the case was in the U.S. Court of Appeals for the Fourth Circuit on the date that the circuit

court held the hearing that resulted in the July 29, 2014 order. The circuit court denied her motion for relief of judgment on February 2, 2015.

Mother filed an amended motion for relief of judgment on February 12, 2015, alleging what she claimed was “fraud.” That claim was based on Mother’s assertion that prior to becoming a judge, Judge Davey was a partner in a firm that represented Fidelity National Financial Title Insurance Company. In her amended motion, she described Fidelity National Financial as “an agency that is benefiting from the [c]ircuit [c]ourts title chain challenge deficiency due to case law that was introduced by the State of Maryland’s courts in efforts to conceal the fraud of foreclosure mills . . . [and] influenced the same courts theft of the Defendant’s minor children. . . .” She further alleged racism (without any supporting facts) on the part of Judge Davey and discriminatory practices on the part of Prince George’s County circuit court judges in general, Judge Zarnoch and Judge Motz, the United States District Court judge who ruled that Mother had no right to remove her case to federal court. The circuit court denied her amended motion on March 18, 2015.

Mother filed another amended motion for relief of judgment on March 24, 2015. This time she asserted that the motion was filed pursuant to Md. Rule 2-534. Therein, she averred that the Prince George’s County Police Department and the Department of Social Services had conspired against her parental rights in “an effort to conceal their violations of the COMAR during the Child Sexual Abuse Investigation in 2010 to the present.” In an April 17, 2015 opinion and order, Judge Davey noted that Mother’s motions for relief of judgment, in which she claimed that various public officials involved in her case were

racists who unlawfully conspired against her, were “procedurally defective.” The court explained that a Md. Rule 2-534, motion to alter or amend a judgment must be filed, if at all, within ten days after the entry of judgment and that Mother had not met that deadline. Judge Davey went on to say that, assuming Mother had intended to file her motion under Md. Rule 2-535(b), the motion also was barred because it was filed more than 30 days after the entry of judgment, and Mother had failed to prove, by clear and convincing evidence, that the judgment docketed on July 29, 2014 was entered as a result of fraud, mistake, or irregularity.

Five days later, on April 22, 2015, Mother filed another motion for relief of judgment. This time she contended that the public officials involved in her case had orchestrated a plan to conceal the fraud of other public officials “who failed to treat victims of a crime . . . with respect and dignity in the State of Maryland.” The court denied that motion on May 7, 2015.

On May 11, 2015, Mother filed, in the Circuit Court for Prince George’s County, yet another motion for relief of all judgments. This time she claimed that an Assistant State’s Attorney had used the prestige of her office to advance the interests of Father’s attorney and the Maryland Mortgage Task Force, when the Assistant State’s Attorney dismissed the charges against Father in the sexual abuse case. Judge Davey took no action on the renewed motion and advised Mother that the court would no longer consider any further motions for relief with respect to allegations that had been raised and rejected earlier.

Mother, on December 21, 2016, filed in the Court of Special Appeals what she called an “expedited Rule 8-207 CINA motion^[5] for correction of record pursuant to MD Rule 8-114 “along with a motion” to vacate PG County Circuit Court judgments. . . for lack of jurisdiction under Md. Rule 235(b) and the 14th Amendment of the US Constitution[.]” Those motions were denied.

On March 24, 2017, Mother moved this Court to “recall transmission of the record under Md. Rule 8-606(d)(1) pursuant to the September 17, 2012 federal remand.” This Court denied that motion on April 11, 2017.

Meanwhile, on April 3, 2017, Mother filed, in the Circuit Court for Prince George’s County, a motion to transmit the record to the Court of Special Appeals pursuant to the September 17, 2012 remand by the U.S. District Court. She claimed that the Court of Special Appeals had “made a mistake upon transmitting the record to the Prince Georges County Circuit Court in violation of the Federal Remand.” After the matter was reviewed on April 19, 2017, the circuit court elected to take “[n]o action at this time.”

On September 12, 2017, Mother filed a motion to modify custody. Father filed a counter-complaint on October 23, 2017 in which he asked that the court hold Mother in contempt for failure to pay child support. Mother moved to strike Father’s counter-claim on October 26, 2017 and on November 15, 2017, Mother requested an order of default against Father.

⁵ There is no evidence in the record of a CINA finding in regard to the children.

On November 22, 2017, Mother filed a motion for emergency and expedited relief in the circuit court in which she alleged, in pertinent part:

. . . on or about July 14, 2014 the Prince George’s County Circuit Court entered an order with hateful and malicious intent to extort money and to displace two minor African American male children from the Defendant, with complete disregard of legal jurisdiction due to a Federal Remand that ordered the Court of Special Appeals to redress claims brought forth to the United States District Court for the District of Maryland. The Court of Special Appeals engaged in grave error and forwarded the record to the Prince George’s County Circuit Court in violation of the Federal Remand.

At a January 11, 2018, hearing concerning all pending motions, Mother and Father both appeared *pro se*. Mother argued that the July 14, 2014 hearing before Judge Davey that resulted in a custody, child support and visitation order docketed on July 29, 2014, was improper because the federal court had remanded the matter to the Court of Special Appeals. In her view, the matter was thus pending in the Court of Special Appeals on July 14, 2014 and should have been decided by the Court of Special Appeals; therefore, according to Mother, the circuit court had no jurisdiction to decide the issues of visitation, child support or custody on that date. She further argued that the circuit court had entered an order with hateful and malicious intent to extort money and displace her two children, and that the Court of Special Appeals had committed a grave error when the Clerk of the Court forwarded the record to the circuit court because, in doing so, the Clerk violated the federal court’s remand order. At the January 11, 2018 hearing, Judge Davey told Mother that her argument had no merit because “the issue of custody and the issue of child support are issues that are jurisdictionally limited to the [c]ircuit [c]ourt, not to Federal Court.” Nonetheless, Mother continued to argue that the matter had been properly removed to

federal court because, in her notice of removal, she had alleged a federal civil rights violation, and the “Federal Court has supplemental jurisdiction over every State claim” such that her claim “still remains meritorious at the Federal Court.”

Judge Davey reserved ruling on the custody issue so he could re-review the documents that were in the file. On January 26, 2018, Judge Davey docketed a written opinion and order in which he treated Mother’s most recent motion for emergency relief as a motion to revise judgment, filed pursuant to Md. Rule 2-535(b). The court denied the motion for emergency and expedited relief, because Mother had produced no evidence of fraud, mistake, or irregularity. The court set in for a hearing Father’s motion to hold Mother in contempt for failure to pay child support. Judge Davey ruled that all other pending motions were moot.

III.

DISCUSSION

In her brief, Mother makes many claims that the Maryland judicial system, in various ways, has treated her unjustly. For instance, she claims that she lost her house due to a mortgage foreclosure that somehow involved the Fidelity National Financial Title Insurance Company. But such allegations are irrelevant. In this case, the only order that appellant appealed is the order dated January 18, 2018 (docketed January 26, 2018), in which Judge Davey denied Mother’s “Motion for Emergency and Expedited Relief,” which she filed on November 22, 2017. That motion sought to set aside Judge Davey’s July 29, 2014 order dealing with custody, visitation and child support on the grounds that,

purportedly, Judge Davey had no jurisdiction to decide such matter. At the January 11, 2018 hearing dealing with the Motion for Emergency and Expedited Relief, appellant focused on her lack of jurisdiction argument. Therefore, the only issue that is properly before this Court is whether Judge Davey abused his discretion in January 2018 in declining to exercise his revisory power to vacate the July 29, 2014 order. *See Jones v. Rosenberg*, 178 Md. App. 54, 72 (2008) (“We review the circuit court’s decision to deny a request to revise its final judgment under the abuse of discretion standard.”). In her brief, under the first question presented, Mother recognizes, at least implicitly, that the validity of her lack of jurisdiction argument hinges on whether she proved fraud, mistake or irregularity under Md. Rule 2-535(b).

Md. Rule 2–535(b) provides for an exception to the general rule that courts do not have revisory power over judgments after thirty days. Rule 2-535(b) states: “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.” As mentioned, the circuit court’s judgment awarding sole legal and physical custody to Father was entered on July 29, 2014. Mother waited more than thirty days after the judgment was entered to try to set the order aside. When a Md. Rule 2-535(b) motion is considered, movant must prove either fraud, mistake or irregularity by clear and convincing evidence. *Das v. Das*, 133 Md. App. 1, 18 (2000). The terms “fraud, mistake, and irregularity,” as used in Maryland Rule 2-535(b), are defined narrowly and are strictly applied, so as to ensure the finality of judgments. *Thacker v. Hale*, 146 Md. App. 203, 217 (2002).

As we explained in *Thacker*, 146 Md. App. at 219-20:

Irregularities warranting the exercise of revisory powers most often involve a judgment that resulted from a failure of process or procedure by the clerk of a court, including, for example, failures to send notice of a default judgment, to send notice of an order dismissing an action, to mail a notice to the proper address, and to provide for required publication.

Applying this narrow concept of “irregularity,” the Court of Appeals consistently has rejected attempts to exercise revisory power over judgments that have been called into question on their merits, rather than on the basis of questionable procedural provenance. The Court has refused to characterize challenges to the substance of judgments that were obtained through appropriate procedures as “irregularities.”

(Internal citations omitted.)

In her brief, appellant does not argue that any irregularity existed in this case. Moreover, the record is devoid of even a hint of the type of irregularity that would warrant revision of the July 29, 2014 judgment.

To establish fraud under Rule 2–535(b), a movant must show extrinsic fraud, not intrinsic fraud. “Fraud is extrinsic when it actually prevents an adversarial trial but is intrinsic when it is employed during the course of the hearing which provides the forum for the truth to appear, albeit, the truth was distorted by the complained of fraud.” *Pelletier v. Burson*, 213 Md. App. 284, 290–91 (2013) quoting *Jones, supra*, 178 Md. App. at 72. And, as we have pointed out, “[t]here are notably few instances in Maryland jurisprudence where a judgment has been vacated on the basis of extrinsic fraud.” *Bland v. Hammond*, 177 Md. App. 340, 352 (2007).

In her brief, appellant accurately defines the term “extrinsic fraud” and concedes that this type of fraud must be proven in order to set aside an enrolled judgment. But, her

only argument in support of her contention that the July 29, 2014 custody order should be set aside due to extrinsic fraud is phrased as follows:

John Davey, et. Al[,] took my son’s away from me for four years by means of extrinsic fraud on the court, due to the grave error of the former Clerk of the Court of Special Appeals, and their collective extrinsic fraud on the court in the matter of property and parental rights prevented adversarial trial.

It is impossible to know what the phrase “collective extrinsic fraud on the court” means. But at the January 11, 2018 hearing, at which Mother’s final “motion for emergency and expedited relief” was heard, Mother introduced no proof that fraud of any type had infected the July 14, 2014 custody hearing. The portion of her argument concerning “the grave error” by the former clerk of this Court, evidently relates to appellant’s contention that Judge Davey had no subject matter jurisdiction because the Court of Special Appeals should have decided the case. This contention will be discussed *infra*.

Under Maryland law, an enrolled judgment can be set aside due to a mistake. Mistake is limited, however, to jurisdictional error, such as when the Court lacks the power to enter judgment. *Pelletier*, 213 Md. App. at 291. In this case, appellant argues that a jurisdictional mistake existed that would justify striking the July 29, 2014 order. Appellant argues that the circuit court lacked jurisdiction to make a custody determination on July 14, 2014 either because an appeal from Judge Motz’s decision was then pending in the United States Court of Appeals for the Fourth Circuit or her case was awaiting a decision by this Court.

No federal court ever had jurisdiction over this case. The case was removed to federal court in error. Thus, Mother had no legal justification for filing a Notice of Removal in the federal court. This was fully explained by Judge Motz in his September 17, 2012 order. Because the federal court had no jurisdiction, Judge Motz remanded the case to the Court of Special Appeals, which was the Court from which Mother had attempted to remove her case after the opinion in *Sewell I* was filed. The Court of Special Appeals, on October 11, 2012, then remanded the case back to the Circuit Court for Prince George's County. Mother cites no authority, and we know of none, to support her position that by appealing Judge Motz's decision that explained that federal courts had no jurisdiction, she could deprive the circuit court of jurisdiction over a child custody case by appealing such an order. As Judge Davey pointed out, over four years ago (at the July 14, 2014 hearing), that argument is without merit.

Mother argues, in the alternative, that because Judge Motz remanded the case to the Court of Special Appeals, this Court, rather than the circuit court, should have heard evidence and decided the issue of custody, visitation and child support. This argument, likewise, has no merit. The Maryland Court of Special Appeals only has power to act in accordance with authority granted to it by the Maryland Constitution and statutes enacted by the General Assembly that implements such constitutional provisions.

Article IV, § 14A of the Maryland Constitution reads:

Intermediate courts of appeal.

The General Assembly may by law create such intermediate courts of appeal, as may be necessary. The General Assembly may prescribe the

intermediate appellate jurisdiction of these courts of appeal, and all other powers necessary for the operation of such courts.

Md. Code (2013 Repl. Vol.), Courts & Judicial Proceedings Article, § 12-

308 reads:

Jurisdiction of Court of Special Appeals.

Except as provided in § 12-307 of this subtitle, the Court of Special Appeals has exclusive initial appellate jurisdiction over any reviewable judgment, decree, order or other action of a circuit court, and an orphans' court.

Section 12-307, provides:

Jurisdiction of Court of Appeals.

The Court of Appeals has:

(1) Jurisdiction to review a case or proceeding pending in or decided by the Court of Special Appeals in accordance with Subtitle 2 of this title;

(2) Jurisdiction to review a case or proceeding decided by a circuit court, in accordance with § 12-305 of this subtitle;

(3) Exclusive appellate jurisdiction with respect to a question of law certified to it under the Uniform Certification of Questions of Law Act; and

(4) Exclusive appellate jurisdiction over a criminal case in which the death penalty is imposed and any appellate proceeding under § 3-904 of the Correctional Services Article.

As can be seen, this Court has only appellate jurisdiction. It has no power to decide facts or receive evidence. Contrary to Mother's argument, the clerk of the court did not err

when, pursuant to this Court’s October 11, 2012 mandate, she sent the case back to the Circuit Court for Prince George’s County.⁶

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

⁶ Although we affirm the judgment entered below on the grounds that Mother never proved fraud, mistake or irregularity, we note that a circuit court can “only exercise its revisory powers if, in addition to a finding of fraud, mistake, or irregularity, the party moving to set aside the enrolled judgment has acted with ordinary diligence, in good faith, and has a meritorious defense or cause of action.” *Tandra S. v. Tyrone W.*, 336 Md. 303, 314 (1994). Mother’s claim of jurisdictional mistake was based on facts that she knew about before the July 29, 2014 order, because on July 14, 2014 her lawyer made the same jurisdictional argument Mother makes in this appeal. She never appealed the July 29, 2014 order and waited more than four months after the time for appeal expired before she filed her first motion for relief of judgment. She clearly did not act with ordinary diligence.