UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2033

September Term, 2012

ELIZABETH KATZ

v.

RICHARD KATZ

Eyler, Deborah S.,
Matricciani,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Matricciani, J.

Filed: April 7, 2014

This appeal arises out of divorce proceedings in the Circuit Court for Howard County between Elizabeth Katz, appellant, and Richard Katz, appellee. A judgment of absolute divorce was entered on August 17, 2007, and provided, in part, that both parties "shall continue to carry health insurance coverage" for their two children "as each employer may allow so that the best interests of the children be advanced . . . ." Richard filed a notice of appeal seeking, among other things, to eliminate the requirement that both parties maintain health insurance for the children. In an unreported opinion issued on March 10, 2008, we affirmed the trial court's order. *Katz v. Katz*, No. 1665, Sept. Term 2007 (filed March 10, 2008).[1]

Almost four years later, on February 13, 2012, Elizabeth filed an emergency motion to modify the judgment of divorce. She sought a court order requiring Richard to cancel the health insurance coverage he maintained for the children retroactive to the date of the

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[1] In that appeal, Richard presented thirteen issues for our consideration, challenging, among other things, the trial court's order that each party maintain health insurance for both children, as each employer may allow. Richard argued that the trial court's order was "wasteful." He also complained that the court failed to order Elizabeth to "utilize health care providers that are in the insurance plans' networks." We found "no error or abuse of discretion in the [trial] court's ruling," stating:

> The coverages are not overlapping, as one pertains to treatment by health care providers that are out-of-network. Both children in this family have significant medical problems and needs. The court ordered that the parents will share the cost of extraordinary medical expenses for the children not covered by health insurance in proportion to their incomes. There was no compelling reason for the court to limit Elizabeth's discretion as to which health care providers are best for the children to be treated by.

Katz, slip op. at 15.

judgment of absolute divorce. In a written order dated October 23, 2012, the circuit court denied the emergency motion. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration, which we have rephrased slightly, is whether the circuit court erred in declining to modify its August 2007 order pertaining to health insurance coverage for the parties' minor children. For the reasons set forth below, we answer no and affirm the judgment of the Circuit Court for Howard County.

FACTUAL BACKGROUND

The parties were married in 1998 and had two children, Brandon, born on March 29, 1990, and David, born on December 22, 1993. Both children had significant healthcare needs. Elizabeth, who has a Ph.D. in toxicology, is employed by the United States Food and Drug Administration ("FDA") and Richard, who has a Master's degree in electrical engineering, is employed by the National Aeronautics and Space Administration ("NASA"). The parties eventually divorced. A judgment of absolute divorce entered on August 17, 2007, provided, in part, that both parties "shall continue to carry health insurance coverage" for their two children "as each employer may allow so that the best interests of the children be advanced . . . ." Both parties included the children in the health insurance they obtained through their employers. From 1991 to the time of the divorce, Richard maintained health insurance coverage for himself and his family, and at the time of the divorce, he had coverage through Aetna. On September 16, 2006, Elizabeth enrolled herself and the children

in a health insurance plan, Government Employees Health Association ("GEHA"), offered through her employment with the FDA. After the entry of the judgment of absolute divorce, health insurance claims were made for both children, some through GEHA and others through Aetna.

On February 13, 2012, notwithstanding the fact that both children were emancipated, Elizabeth filed an emergency motion to modify the judgment of divorce in which she argued that it was in the best interests of the children to "alleviate" Richard's obligation to maintain his health insurance for their benefit. She sought a court order requiring Richard to cancel the Aetna health insurance coverage he maintained for the children retroactive to the date of the judgment of absolute divorce.

Elizabeth's argument was based, in part, on a September 14, 2011 letter she received from GEHA that provided, in relevant part:

> The Federal Employees Health Benefits Act states that no employee, annuitant or family member may be covered by two Federal Plans at once. This constitutes Dual Coverage and is prohibited.
>
> It has come to our attention that Brandon J. Katz and David B. Katz are also covered under their father's Federal Insurance with Aetna Open Access. At the time their father took a family FEHB plan out Dual Coverage became effective.
>
> You and Richard B. Katz must decide which plan the children are to maintain/cancel. Once you have made this decision you must contact your [re]spective employer's [sic]. Please keep in mind the losing policy must be cancelled/voided RETROACTIVE to the effective date of Richard's family plan to resolve the Dual Coverage. Or if you are going to change to

> a single FEHB coverage with GEHA you will need to do that prior to Richard's family policy effective date.
>
> All claims will be placed in a pended [sic] status until this is resolved.

Elizabeth urged the court to order Richard to cancel his coverage for the children with Aetna retroactive to the date of the judgment of absolute divorce because GEHA had been used for the majority of the children's health insurance needs and coverage by Aetna would require retroactive payments to GEHA "for past coverage, amounting to thousands of dollars."

Richard opposed Elizabeth's emergency motion to modify the divorce judgment. Thereafter, the court entered an order providing, in part:

> [A]ccording to Defendant's Opposition, subsequent to the Plaintiff's filing of her Motion to Modify, the United States Department of Health and Human Services voided Plaintiff's health insurance coverage, rendering the matter moot. In light of this new information, the Court requires clarification from Plaintiff with respect to the status of her health insurance coverage for the children.

Elizabeth filed a "Memorandum Regarding Status of Health Insurance" in which she asserted that the GEHA plan was utilized "almost exclusively" to provide health care coverage for the parties' children. She explained that after she filed her emergency motion to modify the judgment of divorce, her health insurance coverage through GEHA was voided effective August 19, 2007, and that an issue had arisen regarding reimbursements to GEHA for payments made by the insurer on behalf of the children. Elizabeth asserted that it would

be "in the best interests of the children" for the court to order Richard to cancel the Aetna insurance coverage for the children so that they could be covered under her GEHA policy. Elizabeth claimed that, "absent permission to cover the children on her insurance, she would be unable to secure the proper treatment for the minor children, and/or to receive reimbursements as necessary."

Richard argued, among other things, that the dual coverage arose when Elizabeth illegally enrolled the children in the Federal Employees Health Benefit ("FEHB") medical insurance program by falsely stating on the enrollment form that there was no other insurance and despite an explicit instruction that dual FEHB enrollment was not permitted. He asserted that the issue was resolved when the United States Department of Health and Human Services ("HHS") voided Elizabeth's FEHB enrollment and cancelled her health insurance. Richard also asserted that the decision to use GEHA to cover the children's health insurance needs was not by the choice of the parties, but was based on the application of the "birthday rule."[2] Further, Richard contended that both Aetna and GEHA were working to reprocess claims, and that Elizabeth was entitled to receive a refund of $11,948.89 for insurance premiums paid during the disallowed period. In addition, Richard argued that although Elizabeth appeared to be seeking a modification of the child support award, she failed to

[2] We understand this "rule" to be an informal industry standard used when children are covered by both of their parents' insurance plans, with the parent whose birthday occurs earlier in the year designated as the primary policyholder. (Theoretically, this makes any given insurer equally likely to be the primary or secondary insurer of children with duplicate coverage, which prevents losses from accumulating with a given insurer.)

show a material change in circumstances and ignored the fact that both Brandon and David were emancipated.

After reviewing numerous supplemental filings by the parties, the circuit court denied Elizabeth's motion to modify the judgment of divorce, stating that exercise of the court's revisory power was "unwarranted by the facts presented." In reaching its decision, the court noted that there was no procedure by which it would be allowed to reopen a divorce decree that was finalized more than four years earlier and that the insurance carriers were working together to coordinate the "reimbursement/payment process resulting from the retroactive cancellation of [Elizabeth's] Self and Family enrollment with GEHA."

DISCUSSION

Elizabeth contends that the circuit court erred in refusing to modify the August 2007 order regarding health insurance coverage for the parties' then minor children. She argues that the judgment of absolute divorce contradicted federal law and required revision, and that as soon as she learned of the prohibition against dual insurance coverage and that her dilemma could not be resolved without litigation, she sought the assistance of the circuit court.

Elizabeth maintains that the circuit court had the power to revise the judgment of divorce pursuant to Maryland Rule 2-535(b), which provides that "[o]n 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." Elizabeth concedes that the "overarching goal of Md.

Rule 2-535(b) is the preservation of the finality of judgments," but she argues that the judgment requiring both her and Richard to provide health insurance coverage for their minor children "was tainted by" mistake and irregularity because the circuit court did not have either the authority or jurisdiction to enter the order when the Federal Employees Health Benefits Act prohibited dual coverage.

Maryland Rule 2-535(b) requires a showing, by clear and convincing evidence, that a proceeding was infected with fraud, mistake, or an irregularity. *Tandra S. v. Tyrone W.*, 336 Md. 303, 314 (1994). This requirement is further illuminated by §6-408 of the Courts and Judicial Proceedings Article, which provides:

> For a period of 30 days after the entry of a judgment, or thereafter pursuant to motion filed within that period, the court has revisory power and control over the judgment. After the expiration of that period the court has revisory power and control over the judgment only in case of fraud, mistake, irregularity, or failure of an employee of the court or of the clerk's office to perform a duty required by statute or rule.

We review the circuit court's ruling on this motion for abuse of discretion, *Das v. Das*, 133 Md. App. 1, 15 (2000), which occurs "where no reasonable person would take the view adopted by the [trial] court," or when the court acts "without reference to any guiding rules or principles." *North v. North*, 102 Md. App. 1, 13-14 (1994). An abuse of discretion occurs when the ruling is "clearly against the logic and effect of facts and inferences before the court[,]" when the decision is "clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result," when the ruling is "violative of fact and logic[,]" or when

it constitutes an "untenable judicial act that defies reason and works an injustice." *Id.* (internal quotation marks omitted).

Elizabeth fails to point to any authority or evidence that entitles her to relief under that Rule. First, the term "mistake" as it is used in Rule 2-525(b), is limited to jurisdictional error, such as when the court fails to obtain personal jurisdiction over a party. *Tandra S.*, 336 Md. at 317. There is no dispute that the circuit court had jurisdiction over the parties and the subject matter of this action.

We also disagree with Elizabeth's assertion that there was evidence of irregularity in that the insurance provision was "invalid and contrary to law." For purposes of Rule 2-525(b), irregularity has been defined as "a failure to follow required procedure or process." *Early v. Early*, 338 Md. 639, 653 (1995); *Thacker v. Hale*, 146 Md. App. 203, 219 (2002). Elizabeth asserts that the circuit court "did not have the authority to order the health insurance in light of the conflict of the provision with the [Federal Employees Health Benefits Act] prohibiting dual coverage" and "lacked jurisdiction to enter an order that was ultimately determined invalid and was modified by [a] Federal agency when the trial court declined to address the issue in the Order now on appeal."

The court's order stated that both parties "shall continue to carry health insurance for the children *as each employer may allow* so that the best interests of the children be advanced consistent with this Order . . . ." (Emphasis added.) There is nothing in that order that *required* Elizabeth to obtain dual health insurance coverage for the children, where her employer (and federal law) prohibited such coverage. Contrary to Elizabeth's assertion, the

federal agency governing her healthcare neither invalidated nor modified the circuit court's order, which required health insurance coverage only to the extent allowed by the parties' employers. Nor did the prohibition on dual health insurance coverage deprive the court of jurisdiction to order each party to obtain health insurance for the children "as each employer may allow." The problems arising from dual enrollment, however, resulted from both parties maintaining insurance coverage *contrary* to their employers' regulations, and they would not have violated the court's order had they complied with those regulations. There is thus no evidence that the court's order was either invalid or contrary to law.

In the alternative to mistake or irregularity under Rule 2-525(b), Elizabeth maintains that the circuit court could have acted under the State's *parens patriae* authority to modify the health insurance provision "as the trial court considered just and proper in light of the circumstances and in the best interests of the children." Again, we disagree. The circuit court's health insurance requirements formed part of its child support award, *see* FL § 12-102(b), which is subject to modification only "upon a showing of a material change of circumstances" and cannot be modified retroactively (prior to the date the motion was filed). FL § 12-104. A change is "material" when it meets two requirements. First, it must be "relevant to the level of support a child is actually receiving or entitled to receive." *Corby v. McCarthy*, 154 Md. App. 446, 477 (2003) (and cases cited therein). "Second, the change must be of a sufficient magnitude to justify judicial modification of the support order." *Id.* (internal quotations and citations omitted).

Nothing in the record before us establishes a material change of circumstances that would justify modification of the circuit court's child support award. At the time Elizabeth filed her motion for modification on February 13, 2012, both children were emancipated, Brandon having reached twenty-one years of age, and David having reached eighteen years of age. The prohibition against dual insurance coverage existed at the time Elizabeth enrolled the children in her employer's health insurance program, and it remained in effect at all times relevant to this appeal. The fact that the parties *obtained* and that their employers *discovered* the dual coverage was not material to the court's order because it did not affect or contradict the standing order, for the reasons given, above. More importantly, there is no evidence other than Elizabeth's own testimony to support her claim that, "absent permission to cover the children on her insurance, she would be unable to secure the proper treatment for the minor children, and/or to receive reimbursements as necessary." To the contrary, the record indicates that if the parties comply with their employers' demands, then the parties will merely revert to the status quo at the time of divorce, which provided full coverage for the children. There is nothing to show that the particulars of medical billing and reimbursement affect the children's best interests.

For these reasons, the circuit court did not err when it denied Elizabeth's motion and refused either to revise its judgment of divorce or to modify its child support award.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.