

Circuit Court for Cecil County  
Case No.: C-07-CV-22-000249

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1793

September Term, 2022

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EVERETT RITCHIE

v.

THOMAS R. DAMIANO, M.D., ET AL.

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Reed,  
Beachley,  
Alpert, Paul E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Alpert, J.

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Filed: November 13, 2023

\*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).

Everett Ritchie, appellant, filed a medical malpractice claim in the Circuit Court for Cecil County against appellees, Thomas Damiano, M.D. and Union Hospital of Cecil County, Inc. Dr. Damiano and Union Hospital each moved to dismiss the complaint, claiming that the statute of limitations had run and that the Certificate of Qualified Expert Mr. Ritchie had filed in support of his claim was deficient. The circuit court granted the motions. Mr. Ritchie appeals the rulings. For the reasons to be discussed, we shall affirm the judgments.

## **BACKGROUND**

### Health Care Alternative Dispute Resolution Office Claim

On October 22, 2021, Mr. Ritchie—representing himself—filed a claim with the Health Care Alternative Dispute Resolution Office (“HCADRO”) against Dr. Damiano and Union Hospital. He alleged that, on March 26, 2018 about 8:40a.m., his girlfriend called 9-1-1 seeking medical help on his behalf. He asserted that at the time he felt unwell, including “pressure and pain in chest.” After an ambulance arrived at his home and the “EMT” checked him out, including a “blood pressure reading” and “EKG,” he was told “everything looked OK[.]” But when asked whether he would like to be taken to the hospital, he said yes.

Mr. Ritchie related that, upon arriving at Union Hospital via ambulance, he was given an EKG which came back normal. He was still complaining, however, of chest pain and anxiety. Although he was told the EKG was “fine,” he was advised that the EKG would be repeated in two-three hours. He asserted that he “ask[ed] loudly what kind of hospital is this what kind of doctor is this after continual distress with no intervention[.]”

He further claimed that he “repeatedly told doctor nurse ‘I have pressure in chest pain emanating out like the sun with edges burning like a ring of acid fire chimneying up toward esophagus[.]’” He related that he was given Benadryl, which essentially put him to sleep. After a second EKG, the decision was made to airlift him to another hospital.

He alleged:

Delay in cardiac intervention resulting in a[n] inferior wall STEMI from a MRCA total occlusion causing diminished heart function.

No cardiac consult for almost 4 hours from admission to emergency room 3.5 hours from first EKG.

On January 20, 2022, Mr. Ritchie filed a Certificate of Qualified Expert and a report prepared by David Dantes, M.D., as required by Md. Code, Courts & Judicial Proceedings, § 3-2A-04(b). It appears that Mr. Ritchie then waived his right to arbitration and on April 26, 2022 HCADRO issued an order to transfer.

### Circuit Court Proceedings

#### *Mr. Ritchie’s Complaint*

On June 24, 2022, Mr. Ritchie, still representing himself, filed a complaint in the circuit court naming Dr. Damiano and Union Hospital as defendants. His complaint consisted of the following allegations:

Delay in cardiac intervention by [Dr.] Damiano . . . at Union Hospital of Cecil County Inc. Emergency Room . . . on 3/26/2018 for over 3.5 hours depriving the heart muscle of its blood supply. The deprivation of blood caused damage to the heart muscle resulting in diminished heart function and potential future problems including but not limited to Heart Failure, Arrhythmia and Cardiogenic Shock.

Furthering the delay in cardiac intervention was the diversion by Union Hospital Emergency room[] nurse Allyson Baumann from Christiana

Care Hospital [address omitted] Newark DE to University of Maryland [address omitted] some 40 nautical miles further in distance.

Although not mentioning a sum, Mr. Ritchie averred that the “amount of relief sought in this matter well exceeds the cap set by the Maryland Courts & Judicial Proceedings Code section 3-2A-09.” He attached to his complaint the Certificate of Qualified Expert and report prepared by Dr. Dantes.

*Union Hospital’s Motion to Dismiss*

On October 19, 2022, Union Hospital filed a motion to dismiss the complaint. As grounds, the hospital asserted that the statute of limitations had expired on March 26, 2021 (the third-year anniversary of Mr. Ritchie’s visit to the emergency room) and the claim with HCADRO was not filed until October 22, 2021. Union Hospital also asserted that Dr. Dantes’s Certificate of Qualified Expert was deficient.

In an accompanying memorandum in support of its motion to dismiss, Union Hospital acknowledged that the statute of limitations in an action against a health care provider is governed by Courts & Judicial Proceedings, § 5-109(a), which provides:

- (a) *Limitations.* – An action for damages for an injury arising out of the rendering of or failure to render professional services by a health care provider . . . shall be filed within the earlier of:
  - (1) Five years of the time the injury was committed; or
  - (2) Three years of the date the injury was discovered.

In support of its position that the statute of limitations had run in this case, Union Hospital asserted that Mr. Ritchie “knew, or should have known, that he had a claim as of the date of his presentation” to the hospital, that is, on March 26, 2018 and, accordingly, the statute of limitations began to run on that date and expired three years later.

In support of its position that the Certificate of Qualified Expert was defective, Union Hospital asserted that Dr. Dantes did not certify that the hospital had breached any standard of care or that any breach of the standard of care by the hospital proximately caused any injury to Mr. Ritchie. Union Hospital further averred that Dr. Dantes did not certify that the alleged breach in the standard of care by Dr. Damiano was the proximate cause of any alleged injury to Mr. Ritchie.

In addition, the hospital asserted that Dr. Dantes was not a “qualified expert” to render an opinion in this case. Focusing on Dr. Dantes’s Curriculum Vitae (“CV”), the hospital argued that because Dr. Dantes had not practiced in-person “*hospital-based emergency medicine* in 21 years[,]” he did not meet the requirement set forth in Courts & Judicial Proceedings, § 3-2A-02(c)(2)(ii)(A) that a qualified expert “[s]hall have had clinical experience, provided consultation relating to clinical practice, or taught medicine in the defendant’s specialty or a related field of health care, or in the field of health care in which the defendant provided care or treatment to the plaintiff, within 5 years of the date of the alleged act or omission giving rise to the cause of action[.]” Rather, the hospital noted that Dr. Dantes’s CV established that “he had been out of the practice of *hospital-based emergency medicine* for almost seventeen years prior to the alleged injury that serves as the basis of [Mr. Ritchie’s] claims.” And the hospital argued that Dr. Dantes’s more recent clinical experience providing “urgent care telehealth consultations” was not comparable to the practice of hospital-based in-person emergency medicine.

By separate pleading, Union Hospital requested an extension of time to file its own Certificate of Qualified Expert. The certificate of service on this motion, as well as on the

motion to dismiss, certified that the motions were mailed via first class mail, postage prepaid, to Mr. Ritchie on October 19, 2022.

*Dr. Damiano’s Motion to Dismiss*

On November 2, 2022, Dr. Damiano filed a motion to dismiss. Like Union Hospital, Dr. Damiano asserted that Mr. Ritchie’s cause of action was barred because the statute of limitations had expired on March 26, 2021, seven months prior to the date Mr. Ritchie filed his claim with HCADRO. In arguing that the three-year statute of limitations was applicable and began to run on March 26, 2018, Dr. Damiano argued that Mr. Ritchie “was unquestionably aware, or at the least had reasonable notice, that he had suffered a wrong” on the date of the incident based on “the alleged 3.5 hour delay of cardiac intervention that he was subjected to.”

And like the hospital, Dr. Damiano argued that Dr. Dantes was not qualified to render an expert opinion in this case due to the lack of requisite experience within five years of the incident. He also asserted that Dr. Dantes had “failed to properly certify that any alleged breach in the standard of care by [Dr. Damiano] was the proximate cause of [Mr. Ritchie’s] alleged injury.”

*Mr. Ritchie’s Response/Lack Thereof to Motions to Dismiss*

On November 15, 2022—27 days after Union Hospital filed its motions—Mr. Ritchie filed a motion requesting an extension of time to respond to “Defendants Motions. 1. Motion To Dismiss. 2. Motion For Extension Of Time To File Certificate Of Qualified Expert.” He asserted, without affidavit or any supporting corroboration, that he had “received the Motions on November 9 2022, 21 days past the electronic fil[ing] date of

October 19 2022[.]” And “[d]ue to the UNTIMELY DELIVERY” of the motions, he asked the court to “restart the 15 day clock to respond” to November 9, 2022.

### *Court’s Rulings*

On November 15, 2022, the court granted Union Hospital’s motion to dismiss the complaint against it. On November 18, 2022, the court (by order entered on November 21, 2022) denied Mr. Ritchie’s request for an extension of time to respond to Union Hospital’s motions. On November 21, 2022, the court granted Dr. Damiano’s motion to dismiss the complaint against him.

### **DISCUSSION**

Mr. Ritchie filed an informal brief with this Court noting that he is appealing the orders of the circuit court granting the appellees’ motions to dismiss. He stated the “issue” for this Court’s review as follows:

A Motion to Dismiss e-filed on 10/19/2022 from Miss Stein counsel for Union Hospital Inc. did not arrive to me until 11/9/2022 not giving me time to respond. I received the motion days after the deadline to respond. I requested the court to reset the clock and it was denied thus dismissing the case.

In the “Supporting Facts and Argument” section of his brief, Mr. Ritchie states:

It is common knowledge that the Baltimore region postal system has been under a congressional investigation and subsequent report showing widespread failures in mail delivery and loss.

The extraordinary fact of being left in an impossible position (no time to respond) and the denial of a time reset put unfair forces to bare on me ultimately causing me to have my entire case dismissed.

I now find myself in the Appellate Court due to the unfair circumstance another result of the failings of the Baltimore area postal

service. Nothing here seems Fair or Just. I feel I have been deprived of Due Process.<sup>[1]</sup>

Mr. Ritchie requests that this Court reverse the dismissals and allow the case to go forward.

As we understand it, the issue Mr. Ritchie is presenting is whether the circuit court erred in denying his motion to extend the time for filing a response to Union Hospital’s motion to dismiss the complaint against it. Although he noted that he is appealing the orders dated “11/15/2022” and “11/21/2021,”<sup>2</sup> he presents no argument whatsoever that the circuit court erred in granting the appellees’ motions to dismiss. Nor does he proffer what response he would have made in the circuit court to the appellees’ motions to dismiss. In other words, Mr. Ritchie does not challenge the appellees’ assertions, raised in their motions to dismiss in the circuit court (and again in this Court), that the statute of limitations had expired, thus barring his claims. Nor does he challenge the appellees’ contention that Dr. Dantes was unqualified to render an expert opinion in this case and that his report was defective because he did not opine that any alleged breach in the standard of care was the proximate cause of Mr. Ritchie’s alleged injury.

We are simply not willing to speculate as to what response Mr. Ritchie would have made to the motions to dismiss—or to make arguments in this appeal on his behalf. Consequently, we cannot say that the court erred in denying his motion to extend the time

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<sup>1</sup> We corrected several misspellings but otherwise have quoted verbatim from Mr. Ritchie’s brief.

<sup>2</sup> We assume that Mr. Ritchie intended to state 11/21/2022—the date of the court’s order granting Dr. Damiano’s motion to dismiss the complaint.



for filing a response to Union Hospital’s motion to dismiss or erred in granting the motions to dismiss filed by Union Hospital and Dr. Damiano.

Although we are aware that Mr. Ritchie is a self-represented litigant and has filed an informal brief, it, nonetheless, is not our responsibility to search the record for error or address an issue not presented or argued on appeal. *Layman v. Layman*, 84 Md. App. 183, 191 (1990) (“A question not presented or argued is waived and not preserved for review. Our function does not include scouring the record for error once a party notes an appeal and files a brief.” (internal citation omitted)); *Maryland Comm’n on Hum. Rels. v. Downey Commc’ns, Inc.*, 110 Md. App. 493, 519 (1996) (“We need not entertain a challenge to a lower court decision if the appellant does not present a legal argument in support of its position.”).

Finally, even if we were to assume that the circuit court erred in denying Mr. Ritchie’s motion to extend the time for filing a response to Union Hospital’s motion to dismiss, that would not necessarily mandate reversal. In a civil case, an appellant must show not only that an error was committed by the circuit court, but also that the error was prejudicial. *Miller v. Mathias*, 428 Md. 419, 446 (2012) (“It is . . . well settled . . . [that] an error that is not shown to be prejudicial does not warrant reversal.”). Mr. Ritchie has made no attempt in either his opening or reply brief to meet his burden of establishing prejudicial error. And it is not this Court’s role to attempt to fashion coherent legal theories

to support an appellant’s claims on appeal. *See HNS Dev., LLC v. People’s Couns. for Baltimore Cnty.*, 425 Md. 436, 459 (2012) and cases cited therein.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR CECIL COUNTY AFFIRMED.  
COSTS TO BE PAID BY APPELLANT.**