

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0641

September Term, 2014

CASTLES OF LOVE ASSISTED LIVING
HOMES, LLC

v.

CEOLA BLANKS, et al.

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: March 2, 2016

*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.

The sole issue in this case is whether the appellant, Castles of Love Assisted Living Homes, LLC (“Castles of Love”) satisfied Maryland Rule 15-403 when it sent notice of its rejection of a health care arbitration award by regular mail instead of certified mail.¹ We hold that it did not.

FACTUAL AND PROCEDURAL BACKGROUND

Ceola Blanks (“Blanks”) was a resident at Castles of Love from 2008 until her death. Blanks complained that she had sustained numerous injuries and was rendered mute due to an infection from a feeding tube while at Castles of Love. As a result, Blanks, through her daughter Janice Cooks, filed a complaint against Castles of Love, alleging professional negligence and seeking compensatory damages “in excess of one hundred thousand dollars.”

The case was referred to arbitration pursuant to the Health Care Malpractice Claims Act, Md. Code Ann., Courts and Judicial Proceedings (“CJP”) § 3-2A-04(a)(1)(i).² Pursuant to the process created by that Act, the arbitration panel found Castles of Love

¹ Castles of Love appeals on three issues: (1) whether Castles of Love’s notice of rejection substantially complied with the rule; (2) whether the HCA’s petition was timely filed; and (3) whether Castles of Love was entitled to a hearing on the motion to set aside arbitration. Because we reject Castles of Love’s first argument, we need not reach the other two.

² CJP §3-2A-04(a)(1) states: “(i) A person having a claim against a health care provider for damage due to a medical injury shall file the claim with the Director and, if the claim is against a physician, the Director shall forward copies of the claim to the State Board of Physicians.”

liable for Blanks' injuries, awarded Blanks \$25,000 in non-economic damages, and \$3,935.42 in arbitration costs. The Health Care Arbitration Office ("HCAO") sent a letter to the parties informing them of its decision. Upon receipt of the HCAO's decision letter, Castles of Love, responded with a letter rejecting the HCAO's findings and recommendations. Castles of Love sent a copy of its rejection letter to the HCAO by certified mail but it sent the copy to Blanks' counsel by regular U.S. mail.

Inexplicably, Castles of Love then filed a motion to vacate the arbitration award or, in the alternative, a motion for summary judgment in the Circuit Court for Prince George's County—where there was no case pending. There wasn't even a case file in which to place Castle of Love's motion. As a result, the circuit court issued a Memorandum and Court Order rejecting the motion, stating:

The pleading has no case number on the top of the pleading. [It was] given to this member of the bench in his capacity as the civil coordinating judge from the clerk's office and a judge's chambers as there was confusion... Counsel informed the court during the phone conference that this is a new arbitration award The court has no choice but to strike these pleadings without prejudice.

Castles of Love never refiled.

On March 6, 2014, the HCAO issued another letter, this time in response to Castles of Love's rejection letter. In this second letter, the HCAO explained that Castles of Love's notice of rejection was not properly served on Blanks because it was sent through regular U.S. mail rather than by certified mail. Moreover, the HCAO noted that the circuit court would not vacate the arbitration award as Castle of Love's motion to vacate had been

rejected and was not renewed. As a result, HCAO's letter concluded that Castles of Love was bound by the HCAO's determination.

On April 3, 2014, Castles of Love wrote back, purporting to reject the HCAO's second letter. Castles of Love sent copies of this letter by certified mail to both the HCAO and Blanks.

The HCAO ignored Castles of Love's second letter and instead filed a petition for confirmation of awards and costs in the Circuit Court for Prince George's County. The circuit court confirmed the awards and ordered that the judgment be entered. This appeal followed.

DISCUSSION

The Court of Appeals has succinctly described the Health Care Malpractice Claims Act arbitration process:

In 1976 the General Assembly enacted the Health Care Malpractice Claims Act, which requires the submission of medical malpractice claims to an arbitration panel prior to the bringing of an action in court. The Act specifies procedures for arbitration of a claim and for seeking judicial relief when a party is unsatisfied with an award. If a claimant wishes to reject an award and proceed with the cause of action, the special procedures proscribed by the Act must be followed. ... The final step in the arbitration process, an essential prerequisite to institution of judicial proceedings, is the filing of notice of rejection with the director of the Arbitration Office. Failure to file notice of rejection permits the arbitration award to become final and binding.

Ott v. Kaiser-Georgetown Community Health Plan, In., 309 Md. 641, 645-46 (1987) (citing *Tranen v. Aziz*, 304 Md. 605, 612 (1985)). “If the Director does not receive a notice of

rejection, the Director *must* file the arbitral award in the circuit court, and the court *must* confirm the award.” *Tranen*, 304 Md. at 613 (emphasis added).

To obtain judicial review in a health claims case, two separate steps must be successfully completed:

It is clear that the statute requires two separate undertakings to obtain judicial review: *first*, [CJP] § 3-2A-06(a) calls for a notice of rejection to be ‘filed with the Director and the arbitration panel and served on the other parties or their counsel within 30 days after the award is served upon the rejecting party...’; *second*, [CJP] § 3-2A-06(b) requires that, within the time limits for rejecting the award, the aggrieved party ‘shall file an action in court to nullify the award and shall file a copy of the action with the Director.

Tranen, 304 Md. at 611 (emphasis added) (internal footnotes omitted). “Because either party may reject an award, the obvious purpose of the two-step process is to address the situation where the defendant is unsatisfied by the decision of the arbitration panel. In such a case the defendant need only reject the award and file the notice of action in court.” *Ott*, 309 Md. at 647.

Rule 15-403(d) specifies how that notice to reject must be served:

The defendant shall serve a copy of the notice to reject upon the plaintiff and all other parties to the arbitration proceeding. Service upon the plaintiff shall be either in the manner prescribed by Rule 2-121^[3] or, if the plaintiff was represented by counsel in the arbitration proceeding, on counsel by

³ This refers to the manner in which service of an original civil complaint is made: in person, by leaving at the dwelling of the person served with a responsible person, or by certified mail, restricted delivery. Md. Rule 2-121.

certified mail, return receipt requested. Service upon all other parties to the arbitration proceeding shall be in the manner prescribed by Rule 1-321.^[4]

Md. Rule 15-403(d). Thus, although other parties may be served by regular U.S. mail, the defendant must serve his notice of rejection on plaintiff's counsel by certified mail, return receipt requested.

If the defendant rejects the award, the plaintiff must then file a complaint within the later of (A) thirty days of service of the notice of rejection or (B) ten days after service by the chair of the panel or the Director. Rule 15-403(c)(3). As a result, “[t]he notice of rejection serves as the final step in the arbitration procedure by which the award may be held non-binding and the claim held open for judicial resolution.” *Tranen*, 304 Md. at 612.

Although Castles of Love's attempt to reject the arbitration award was timely, its September 9th notice of rejection was sent to Blanks by regular U.S. mail and, therefore, did not comply with the certified mail requirement of Rule 15-403(d). Wisely, Castles of Love does not argue that it strictly complied with Rule 15-403(d), but argues instead that, on the facts of this case, service on Blanks by regular U.S. mail constitutes *substantial* compliance.

The Court of Appeals has held that substantial compliance with the notice of rejection rules of the Health Care Malpractice Claims Act is sufficient when the notice

⁴ This refers to the manner in which service of papers other than an original complaint is made, which includes by regular U.S. mail. Md. Rule 1-321.

given does not frustrate the purpose of the notice, and does not prejudice the opposing party. *Ott*, 309 Md. at 650-51 (comparing insubstantial rule violations that did not affect substantial rights to failures which implicate the underlying policies of the Health Care Arbitration Act and amounted to an attempt to circumvent the Act’s mandatory procedures); *Blundon v. Taylor*, 354 Md. 1, 18 (2001) (citing *Ott*, 309 Md. at 651).

Castles of Love argues that the purpose of the certified mail requirement is merely to assure notice and that here, we can find that Blanks received notice either by virtue of the legal presumption that a properly addressed letter successfully arrived to the intended recipient, *Rockwood Cas. Ins. v. Uninsured Employers’ Fund*, 385 Md. 99, 116 (2005), or because Blanks has not claimed that she did not receive the letter. Moreover, Castles of Love assures us, Blanks has not claimed that she was prejudiced by Castles of Love’s failure to send the letter by certified mail. We address these arguments in turn.

Frustration of Purpose

In our review of the cases, we have identified three purposes that are served by requiring service by certified mail. *First*, certified mail ensures that the party to whom notice is sent received the notice. *First Am. Bank v. Shivers*, 97 Md. App. 405, 424 (1993). *Second*, certified mail provides a record of delivery. *Id.* This record is important both to prove the fact of delivery, but also the date on which delivery occurred. *Third*, certified mail “flags” for the recipient that a mailing is important:

A requirement that notice of a transaction be mailed by certified mail, return receipt requested, not only serves the evidentiary purpose of proving delivery, but it also flags the

notice being sent, setting the envelope apart from its brethren and indicting to the addressee that this particular piece of mail deserves special attention.

Id. Regular mail fulfills none of these three purposes.

Castles of Love, relying alternatively on (1) Blanks' failure to deny receipt and (2) the legal presumption of receipt, claims that it has satisfied the first purpose—assurance of receipt. Even if true, however, we think this is insufficient as it did not satisfy the other purposes of certified mail. There is no record either of the fact of delivery or the date on which it occurred. And there was nothing about a letter sent by regular mail that would flag it to Blanks' attention. Thus, we hold that Castles of Love's attempted service did not fulfill, but instead frustrated the purpose of the Rule.

Prejudice

Castles of Love's failure to comply with Rule 15-403 also prejudiced Blanks' ability to file an action in circuit court. Because Castles of Love failed to serve Blanks by certified mail, there is no record of when the letter was delivered. Therefore, Blanks cannot know when the clock began to run for her to file a complaint in response as is required by Rule 15-403(c)(3). Thus, Blanks' ability to institute a circuit court action and protect her rights was prejudiced by Castle of Love's improper service.⁵

⁵ Castles of Love's second notice of rejection, dated April 3, does not fix the first improper notice of rejection. Although, Castles of Love's second notice of rejection was sent by certified mail, it was sent after the thirty-day time limit.

Castles of Love service of the notice to reject by regular mail, therefore, both frustrated the purpose of Rule 15-403 and prejudiced Blanks, and, as a result, did not substantially comply. The Court of Appeals has chastised litigants who, through their own fault, failed to follow procedural requirements:

The law is replete with procedural hurdles over which a plaintiff must jump before his claim can be heard in court. If the plaintiff through his own fault misses one of those hurdles, he will not be heard to complain of his inability to maintain his cause of action.

Roth v. Dimensions Health Corp., 332 Md. 627, 632 (1993). Castles of Love has failed to “jump” the procedural hurdles set out in the Maryland Rules. Our occasional acceptance of notice that substantially but does not strictly comply with the Rules should not be interpreted as giving license to ignore the plain language of a rule, and “to hold otherwise would be to render the rule meaningless and, in a broader sense make substantial compliance the rule, rather than the exception for the exceptional case.” *Blundon*, 364 Md. at 23. We affirm the judgment of the Circuit Court of Prince George’s County.

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