Circuit Court for Charles County
Case No. C-08-CV-21-000428

UNREPORTED

IN THE APPELLATE COURT OF

OF MARYLAND*

No. 840

September Term, 2022

MARTHA COPELAND

v.

BRIAN E. REHM

Kehoe,
Zic,
Wright, Alexander, Jr.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: April 26, 2023

* At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

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.

Martha Copeland appeals from a judgment of the Circuit Court for Charles County entered against her by default. She presents three issues, which we have broken down into four and reworded:

1. Was appellee's complaint sufficiently well-pled to establish claims for injunctive or declaratory relief?
2. Do Md. Code Courts & Jud. Proc. § 5-403 and Charles County, Md., Code § 235-1 *et seq*, bar appellee's claims?
3. Did the circuit court err in awarding attorney's fees to appellee?
4. Did the Circuit Court err in granting damages in an amount greater than $1,000?

We conclude that appellant's first three contentions fail as a matter of law but that any award of monetary damages in this case is limited to $1,000. We will affirm the judgment in part, reverse it in part, and remand the case for further proceedings.

BACKGROUND

This appeal arises out of a longstanding dispute between the parties regarding appellant's use of her property, which is adjacent to appellee's residence. Appellee asserts that appellant's property uses—including leasing a portion of her home as an apartment, breeding for sale dogs, peacocks, chickens (both hens and roosters), ducks, rabbits, and goats, as well as operating a rescue service for cats and placing her refuse containers in her front yard—constituted a nuisance and violated the subdivision covenants which appellee asserts encumber both of their properties.

On September 23, 2021, appellee filed a multi-count complaint in the circuit court setting out several causes of action which we summarize in the following table:

Count	Cause of Action	Relief Sought
1	Violations of Covenants: Prohibiting Farm Animals, Poultry, Livestock Etc.	$1,000 in damages for cleaning and repairing appellee's property, unquantified damages for loss of quiet enjoyment of appellee's property, injunctive relief, attorney's fee and courts costs, and "all other just and proper relief."
2	Violations of Covenants: Prohibiting Non-Residential Uses	Unquantified damages for loss of quiet enjoyment of appellee's property, injunctive relief, attorney's fee and courts costs, and "all other just and proper relief."
3	Violations of Covenants: Prohibiting Use of Basement as Residential Purposes	Unquantified damages for loss of value of appellee's property, injunctive relief, attorney's fee and courts costs, and "all other just and proper relief."
4	Violations of Covenants: Prohibiting Fences in Front Yards	Unquantified damages for loss of value of appellee's property, injunctive relief, attorney's fee and courts costs, and "all other just and proper relief."
5	Violations of Covenants: storage of trash containers	Unquantified damages for loss of value of appellee's property, injunctive relief, attorney's fee and courts costs, and "all other just and proper relief."
6	Private Nuisance	Unquantified damages for loss of use and enjoyment of appellee's property, injunctive relief, attorney's fee and courts costs, and "all other just and proper relief."
7	Declaratory Relief	A declaratory judgment that the subdivision covenants are valid and enforceable against appellant's property.

The complaint's *ad damnum* clause stated that appellee sought an award of "actual damages to [appellee], in an amount to be established at trial but in excess of $1,000[.]"

Appellant was served with a summons and the complaint on October 21, 2021. She did not file an answer. On December 6, 2021, appellee requested an order of default pursuant to Md. Rule 2-613(b), which was granted by the court. Appellant did not file a motion to vacate the order of default. In due course, appellee filed a request for a judgment by default. On February 28, 2022, the court held a default hearing, which appellant did not attend. The court entered judgment on March 15, 2022, declaring that the subdivision covenants at issue were valid and enforceable against appellant, and further ordering, among other relief, that appellant remove all animals other than pets from her property and cease leasing her basement apartment. The court also awarded appellee damages of $1,000 in actual damages for cleaning and repairing appellee's property (Count 1), and $18,000 for the loss of quiet enjoyment of his property (Count 2). The court also awarded $11,564 in attorney's fees and costs.

On March 25, 2022, appellant, now represented by counsel, filed a motion to alter or amend the judgment pursuant to Md. Rule 2-534,[1] and on July 12, 2022, the circuit court held a hearing on that motion. The primary factual issue at the hearing was whether appellant had been properly served with the summons and complaint. The court found

[1] Appellant titled the motion "Motion to Vacate Default Judgment." But Maryland courts treat motions and other papers filed by parties according to their substance, and not their label. *See, e.g.*, *Att'y Grievance Comm'n v. Malone*, 477 Md. 225, 271 n.16 (2022); *Corapcioglu v. Roosevelt*, 170 Md. App. 572, 590 (2006); and *Alitalia Linee Aeree Italiane v. Tornillo*, 320 Md. 192, 195 (1990).

that appellant's testimony that she had been improperly served lacked credibility and indicated that her other contentions were without merit. The court denied the motion.

On July 18th, appellant filed a notice of appeal. The trial court's order denying the motion to alter or amend the judgment was filed on July 26, 2022, and the notice of appeal was deemed to be filed on that day. *See* Md. Rule 8-202(c).

STANDARD OF REVIEW

Generally, an appellate court reviews a trial court's denial of a motion to alter or amend a judgment for abuse of discretion. *See Miller v. Mathias*, 428 Md. 419, 438, (2012). However, appellate courts do not defer to the trial courts when a discretionary decision is based upon an incorrect understanding of the relevant law. *Id.*

ANALYSIS

Appellant's failure to timely file a motion to vacate the order of default bars most of the relief that she seeks

Md. Rule 2-613(d) provides that a defaulting party may file a motion to vacate an order of default within thirty days of the date that the order was entered. A party who fails to do so forfeits the right to challenge the judgment as to liability. As the Maryland Supreme Court[2] explained in *Franklin Credit Mgmt. Corp. v. Nefflen*:

> A defaulting party who does not file a motion to vacate which is denied cannot file a Rule 2–534 motion to alter or amend a judgment to contest

[2] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

> liability under an order of default after a default judgment has been entered and *cannot appeal that judgment in order to contest liability*.

436 Md. 300, 326 (2013) (emphasis added); *see also Att'y Grievance Comm'n v. Thomas*, 440 Md. 523, 549 (2014) ("[A]n order of default determines liability conclusively, and such a determination may be set aside only if the defendant moves successfully to vacate the order.") (cleaned up).

In the present case, appellant did not file a motion to vacate the circuit court's order of default judgment. As a result, the following contentions raised by appellant are not properly before this court: (1) appellee's complaint failed to meet the pleading requirements for claims of injunctive or declaratory relief; (2) the "right-to-farm" statutes codified as Courts & Jud. Proc. § 5-403 and Charles County, Md., Code § 235-1 *et seq*., bar appellee's claims; and (3) the circuit court erred as a matter of law in awarding attorney's fees to appellee.

However, even though appellant failed to file a timely motion to vacate the order of default, she nonetheless has the right to challenge the amount of the award of damages on appeal, as the amount of damages is not an issue of underlying liability.

The award of damages in excess of $1,000

Md. Rule 2-305 states (emphasis added and cleaned up):

> A pleading that sets forth a claim for relief . . . shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for the relief sought. *Unless otherwise required by law, a demand for a money judgment that does not exceed $75,000 shall include the amount of damages sought*, and a demand for a money judgment that exceeds $75,000 shall not specify the amount sought, but

> shall include a general statement that the amount sought exceeds $75,000. Relief in the alternative or of several different types may be demanded.

Maryland caselaw is clear that an award of damages generally may not exceed the amount requested in the operative complaint. *Hoang v. Hewitt*, 177 Md. App. 562, 578 (2007) ("For almost 200 years, Maryland has followed the common law rule that the amount of compensatory damages a plaintiff may recover in a civil action is limited to the amount of damages requested in his operative pleading." (citing *Harris v. Jaffray*, 3 H. & J. 543 (1811)); *White Pine Ins. Co. v. Taylor*, 233 Md. App. 479, 512 (2017)).[3]

---

[3] When *Hoang* was decided by this Court, Md. Rule 2-305 stated in pertinent part (emphasis added):

> [a] pleading that sets forth a claim for relief . . . shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for relief sought. *Unless otherwise required by law, a demand for a money judgment shall include the amount sought*. Relief in the alternative or of several different types may be demanded.

Hoang, 177 Md. App. at 585.

Effective January 1, 2013, the Supreme Court of Maryland amended Rule 2-305 to include its present requirement that "a demand for a money judgment that does not exceed $75,000 shall include the amount of damages sought, and a demand for a money judgment that exceeds $75,000 shall not specify the amount sought, but shall include a general statement that the amount sought exceeds $75,000." The policy reasons for the 2013 amendment are discussed in Paul V. Niemeyer and Linda M. Schuett, MARYLAND RULES COMMENTARY 331–32 (5th Ed., 2019).

The amendment to Rule 2-305 does not affect the validity of our holding in *Hoang* in cases, such as the one before us, where the claim for damages does not exceed $75,000.

In the present case, other than the request for $1,000 in damages for cleaning and repairing appellee's property, appellee's complaint did not request an award of specific amounts of damages nor did the complaint assert that the damages sought exceeded $75,000. Instead, the complaint requested an award of "actual damages to [appellee], in an amount to be established at trial but in excess of $1,000[.]" A demand for monetary damages in a complaint must strictly comply with the plain language of Rule 2-305 in order to satisfy its requirements. *Hoang*, 177 Md. App. at 588–89.

Hoang is similar to the case before us. In that case, the plaintiff requested an award "in excess of $100,000," and the trial court ultimately awarded $1,889,755.98 in damages. *Id.* We were asked to address whether a request for damages "in excess of $100,000" complied with Rule 2-305. 177 Md. App. at 567. in answering this question in the negative, we explained:

> [A]n *ad damnum clause* that seeks damages "in excess of" a stated amount cannot satisfy the plain language directive of Rule 2–305, that "a demand for a money judgment shall include the amount sought." A demand for a money judgment "in excess of" a given number is not a demand for "the amount sought" in damages. It is a request for damages in an unstated amount that is not less than the stated amount . . . . A demand for "the amount sought" puts the opposing party on notice of the sum of money being sought in damages. A demand for damages "in excess of" a stated amount does not[.]

177 Md. App. at 588.

We concluded that the award should be reduced to $100,000:

> Given that the *ad damnum* clause properly stated a specific sum, but then improperly modified it, by the phrase "in excess of," to make it non-

> specific, we conclude that the offending words should be read out of the *ad damnum* clause, and therefore the clause must be read as one seeking $100,000 in damages.

Id. at 589.

Returning to the present case, appellee's complaint contains the same defect as did the complaint in *Hoang*. Appellee's request for damages "in an amount to be established at trial but in excess of $1,000" capped any damages award at $1,000. The trial court's award of an additional $18,000 in damages for loss of quiet enjoyment was not consistent with Rule 2-305 and the caselaw interpreting it. We remand this case to the circuit court for it to reduce the damages award to $1,000. We otherwise affirm the judgment.

THE JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY IS AFFIRMED IN PART AND REVERSED IN PART. THIS CASE IS REMANDED TO THE CIRCUIT COURT FOR PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS ALLOCATED AS FOLLOWS: APPELLANT 75%; APPELLEE 25%.