Circuit Court for Baltimore County
Case No. C-03-CV-21-002550

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0001

September Term, 2022

NATALIE THOMAS

v.

MAI NGUYEN, et al.

Friedman,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 14, 2022

On August 5, 2021, appellant Natalie Thomas filed a complaint in the Circuit Court for Baltimore County. The complaint alleged one count of negligence against appellee Shawn Woodall and one count of vicarious liability against appellee Mai Nguyen stemming from an automobile accident on August 3, 2018. Ms. Nguyen and Ms. Woodall (the "appellees") filed a Motion to Dismiss on October 1, 2021. Ms. Thomas responded by filing a Motion to Strike appellees' Motion to Dismiss on the basis that the Motion to Dismiss was not timely filed. Following a hearing, the circuit court denied Ms. Thomas's Motion to Strike, and granted appellees' Motion to Dismiss the complaint. Ms. Thomas timely appealed and presents the following two issues for our review, which we have rephrased as follows:[1]

1. Did the circuit court abuse its discretion in denying Ms. Thomas's Motion to Strike?

2. Did the circuit court err in granting appellees' Motion to Dismiss?

We conclude that the circuit court did not abuse its discretion in denying Ms. Thomas's Motion to Strike, and that the court properly granted appellees' Motion to Dismiss. We therefore affirm.

[1] Ms. Thomas presented the following two questions for our review:

1. Did the circuit court abuse its discretion when it denied [Ms. Thomas's] motion to strike and granted the [a]ppellees' untimely motion to dismiss?

2. Did the circuit court err when it failed to treat the [a]ppellees' motion to dismiss as a motion to strike thus misapplying the burden to prove prejudice on [Ms. Thomas] and not the [a]ppellees?

FACTS AND PROCEEDINGS[2]

According to Ms. Thomas's complaint, on August 3, 2018, she was driving eastbound on Holabird Avenue in Baltimore County. While stopped at a red light, a vehicle being driven by Ms. Woodall, with the authorization of Ms. Nguyen, struck Ms. Thomas's stopped vehicle. Ms. Thomas thereafter filed a complaint against both Ms. Woodall and Ms. Nguyen. Notably, the complaint was not filed until August 5, 2021.

On October 1, 2021, appellees filed a Motion to Dismiss Ms. Thomas's complaint. The motion noted that the incident giving rise to the complaint—the motor vehicle accident—occurred on August 3, 2018, but that the complaint itself was not filed until August 5, 2021, clearly outside the three-year statute of limitations set forth in Md. Code (1974, 2020 Repl. Vol.), § 5-101 of the Courts and Judicial Proceedings Article.

In response, on October 4, 2021, Ms. Thomas filed a Motion to Strike appellees' Motion to Dismiss. In her Motion to Strike, Ms. Thomas argued that appellees' Motion to Dismiss was not timely filed pursuant to the Maryland Rules. Specifically, Ms. Thomas noted that Maryland Rule 2-322(b)(2) grants a party the opportunity to file a motion to dismiss before the party files an answer, but that the answer must be filed within 30 days after service of the complaint. Ms. Thomas claimed that by August 26, 2021, she had

[2] Because Ms. Thomas appeals the circuit court's denial of her motion to strike and the court's grant of appellees' motion to dismiss, we are required to "presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom." *Higginbotham v. Pub. Serv. Comm'n of Md.*, 171 Md. App. 254, 264 (2006) (quoting *Britton v. Meier*, 148 Md. App. 419, 425 (2002)). Accordingly, our factual recitation presumes the truth of the facts alleged in Ms. Thomas's complaint.

personally served both defendants,[3] and that an answer or motion to dismiss was due no later than September 26, 2021.[4] Noting that the Motion to Dismiss was not filed until October 1, 2021, Ms. Thomas argued that the motion was filed "five days past the time allotted to file an answer/motion." Appellees filed their answer to the complaint on October 5, 2021.

The parties appeared for a hearing before the Circuit Court for Baltimore County on February 2, 2022. At the hearing, the court denied Ms. Thomas's Motion to Strike, and granted appellees' Motion to Dismiss, thus dismissing Ms. Thomas's complaint with prejudice. Ms. Thomas timely appealed. We shall provide additional facts as necessary.

DISCUSSION

I. THE COURT DID NOT ABUSE ITS DISCRETION IN GRANTING THE MOTION TO STRIKE

The first issue we must resolve is whether the circuit court abused its discretion in denying Ms. Thomas's Motion to Strike. Regarding the appropriate standard of review of a court's grant of a motion to strike, this Court has stated that "The decision whether to grant a motion to strike is within the sound discretion of the trial court." *Bacon v. Arey*,

[3] In both her Motion to Strike and her appellate brief in this Court, Ms. Thomas states that she served Ms. Nguyen on August 7, 2021. Elsewhere in her Motion to Strike, as well as at the hearing in the circuit court, Ms. Thomas proceeded on the theory that appellees' Motion to Dismiss was filed "a total of five days past the time allotted to file"—thus implicitly conceding that she served Ms. Woodall on August 26, 2021. Whether Ms. Nguyen was served on August 7 or later in August is immaterial to our holding.

[4] We note that September 26, 2021, was a Sunday. Thus, Ms. Thomas's Motion to Strike should have stated that appellees' answer or motion was due no later than Monday, September 27, 2021. *See* Maryland Rule 1-203(a)(1).

203 Md. App. 606, 667 (2012) (quoting *First Wholesale Cleaners, Inc. v. Donegal Mut. Ins. Co.*, 143 Md. App. 24, 41 (2002)).

> An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court[] . . . or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court[] . . . or when the ruling is violative of fact and logic."

Id. (quoting *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 28 (2005)).

Ms. Thomas relies on the Maryland Rules to support her Motion to Strike appellees' Motion to Dismiss. Rule 2-321(a) states that "A party shall file an answer to an original complaint . . . within 30 days after being served . . . ." Rule 2-322 clarifies that certain defenses may be made prior to the filing of an answer. One such defense is "failure to state a claim upon which relief can be granted[.]" Rule 2-322(b)(2). Notably, "[i]f it is apparent from the face of the complaint that the action is barred by the statute of limitations, the complaint fails to state a claim upon which relief can be granted and the statute of limitations can be the grounds for a motion to dismiss." *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 175 (1997) (citing *G & H Clearing & Landscaping v. Whitworth*, 66 Md. App. 348, 354 (1986)). According to Ms. Thomas, in order for appellees to timely move to dismiss the complaint on limitations grounds, they were required to file their motion no later than September 26, 2021, thirty days after Ms. Thomas had served them both with her complaint. Because appellees did not file their Motion to Dismiss until October 1, 2021, Ms. Thomas argued that the motion was five days late according to the

Rules, and that the motion should therefore be stricken.[5]

In considering Ms. Thomas's Motion to Strike, the circuit court asked counsel what prejudice Ms. Thomas suffered as a result of the five-day delay. Ms. Thomas's counsel responded that the delay "precluded us from being able to respond timely to . . . strike that." The court nevertheless observed that Ms. Thomas's Motion to Strike was still timely filed pursuant to the Rules. Ultimately, the court denied the Motion to Strike, explaining at the hearing:

> I'm going to deny the motion to strike. I find that there's at least, to the extent necessary that there is good cause to permit the only slightly late filing of the motion to dismiss and answer. There was no motion for default filed within that time period. Had a default been entered I would have stricken it. These are issues that can be raised at, in different ways and I find that there was no prejudice to [Ms. Thomas] by the, the, even assuming there was a five day late filing here.

We conclude that the circuit court did not abuse its discretion in denying Ms. Thomas's Motion to Strike. In *Garrett v. State*, this Court was tasked with determining whether the circuit court erred in granting a motion to strike a complaint. 124 Md. App. 23, 25 (1998). There, Ms. Garrett filed a complaint in the District Court on May 30, 1997, alleging that she was injured when "several sheriff's deputies knocked her down while pursuing a suspect in the Clarence Mitchell Courthouse in Baltimore[.]" *Id*. The State and the Mayor and City Council of Baltimore (collectively the "State")—defendants in the

[5] Again, because September 26, 2021, was a Sunday, appellees' motion or answer was not due until September 27, 2021.

case—moved for a jury trial, and the case was removed to the Circuit Court for Baltimore City. *Id.*

On July 17, 1997, the clerk of the Circuit Court for Baltimore City mailed a notice of removal to the parties. *Id*. at 26. Notably, then Rule 2-326(c) required Ms. Garrett to file another complaint in the circuit court within 30 days—or August 16, 1997. *Id*. Ms. Garrett, however, failed to file her new complaint until September 8, 1997. *Id*. Due to Ms. Garrett's late complaint, the State moved to strike the complaint pursuant to Rule 2-322(e). *Id*. Without holding a hearing or issuing an opinion, the circuit court granted the State's motion. *Id*.

On appeal, this Court first noted that, pursuant to *Patapsco Assocs. Ltd. P'ship v. Gurany*, 80 Md. App. 200, 204 (1989), a motion to strike "should be granted only if the delay prejudices the defendant." *Garrett*, 124 Md. App. at 27. The Court readily rejected any notions of prejudice based on Ms. Garrett's late filing, noting that the late filing did not prevent the State from thoroughly investigating the claim, nor did the late filing preclude the State from filing a third-party complaint against the suspect the deputies were chasing at the time of the incident. *Id*. at 27-28. Accordingly, the Court found no prejudice. *Id*. at 28.

The Court next examined the burden of proof in a motion to strike. *Id*. at 28. After considering the general allocation of the burden of proof, the Court stated:

> These considerations weigh strongly in favor of placing the burden of proof on the issue of prejudice on the party advancing the motion to strike. Indeed, that party is asserting the affirmative of the issue; and that party

> would also appear the one who could more easily demonstrate that prejudice has occurred.

Id. at 29. Because the State failed to show any prejudice based on the late filing, the Court reversed the circuit court's grant of the State's motion to strike. *Id.* at 31. Thus, pursuant to *Garrett*, before a court may grant a motion to strike pursuant to Rule 2-322(e), there must be some showing of prejudice, and the moving party bears the burden of proof.

Applying *Garrett* here, we have no difficulty affirming the circuit court's denial of Ms. Thomas's Motion to Strike. Simply put, Ms. Thomas has failed to establish any prejudice based on the late filing. Not only does the Motion to Strike fail to specifically claim any prejudice, but Ms. Thomas's allegations of prejudice at the hearing were unconvincing. As noted above, at the hearing, Ms. Thomas's counsel claimed an inability to "respond timely" to the Motion to Dismiss, but the circuit court noted that the Motion to Strike was timely, and counsel agreed. Counsel also confusingly claimed that he did not receive service of the motion until several days after it was filed, but agreed with the circuit court that because the Motion to Dismiss was filed on MDEC, Ms. Thomas was deemed served on October 1, 2021. In the parlance of *Garrett*, "[Ms. Thomas] did not suffer any tangible detriment from [appellees' five-day] delay." *Id*. at 28. Accordingly, the circuit court did not abuse its discretion in denying her Motion to Strike.

We are further bolstered in concluding that the circuit court did not abuse its discretion in denying Ms. Thomas's Motion to Strike because the current state of the law provides that a limitations defense is not automatically waived if it is not raised in the

original answer or mot ion to dismiss. In *Samuels v. Tschechtelin*, 135 Md. App. 483, 542 (2000), this Court stated:

> Finally, we point out that it is not necessarily fatal if the defense of statute of limitations is not asserted in the original answer. We find support for this position in MARYLAND RULES COMMENTARY. The authors of that treatise note that "Rule 2-323 does not contain an explicit sanction for the failure to include the specified affirmative defenses in an answer." Paul V. Niemeyer and Linda M. Schuett, MARYLAND RULES COMMENTARY, at 198 (2d ed. 1992). Although affirmative defenses may be waived if not asserted in the initial answer, "the court may permit a party to cure the waiver . . . . The liberal amendment policy . . . should permit a party to amend any defense or to include a new defense unless it is not in the interest of justice to relieve a party from the waiver." *Id*. Moreover, the treatise specifically observes that when a defendant seeks to amend an answer to add a statute of limitations defense that was omitted from the initial answer, a "waiver . . . is not automatic . . . ." *Id*. at 199. Rather, the plaintiff must show "prejudice, unfair surprise, or lack of fairness." *Id*.

As noted in Maryland Rules Commentary, this view is consistent with the "approach of the federal courts [] not to treat waiver as automatic and require instead a showing of prejudice or unfair surprise to the plaintiff from the omission of the defense in the answer." Paul V. Niemeyer & Linda M. Schuett, Maryland Rules Commentary 367 (5th ed. 2021). Similarly, we are not aware of any authority that would support Ms. Thomas's contention that the limitations defense is automatically waived when an answer (or other responsive pleading) is not timely filed. In that circumstance, it logically follows that the court maintains discretion to allow the defense absent a showing of prejudice.

Ms. Thomas persists in her argument that when a party fails to raise the defense of limitations in the answer or motion to dismiss, the defense is waived. The authority on which Ms. Thomas relies, however, is distinguishable. For example, Ms. Thomas cites

Foos v. Steinberg, 247 Md. 35, 37 (1967), for the proposition: "[i]n reversing the lower court we need go no further than to hold that the appellee's plea of limitations was not filed within the time contemplated by the Maryland Rules and thus should have been stricken pursuant to Rule 322."

We reject Ms. Thomas's reliance on *Foos* because when that opinion was issued in 1967, Rule 342 provided not only that limitations be "specially pleaded" in both contract and tort actions, but subsection d. of the Rule expressly provided that a "plea of limitations must be filed within the time required by Rule 307," *i.e.* fifteen days after the day of return to file an initial pleading. *Id.* at 37-38. The current Rule, Rule 2-323(g), provides that 20 enumerated affirmative defenses—including statute of limitations—must be raised by "separate defense" in the answer. Thus, there is currently no Rule comparable to former Rule 342 that specifically governs the time for filing a "plea of limitations."

Nor are we persuaded by Ms. Thomas's reliance on *Brooks v. State*, 85 Md. App. 355 (1991). There, near the end of the State's case against Brooks for five counts of first-degree murder and related charges, Brooks realized, for the first time, that the State's conspiracy charges "had been brought more than one year after the termination of the conspiracy" in violation of Maryland law. *Id*. at 358. Although the circuit court agreed to dismiss those charges, *id*., Brooks failed to raise this same defense regarding his misdemeanor false imprisonment charges. *Id*. at 361. When Brooks tried to invoke his limitations defense for the first time on appeal, this Court, relying on *Foos*, denied the argument, stating "Failure specially to plead limitations within the time set forth in the Rule

results in a waiver of the plea." *Id*. at 365 (citing *Foos*, 247 Md. at 37). This Court further explained, "the running of limitations must be raised as an affirmative defense, usually before trial and, at the latest, during trial, when its availability shall have become apparent." *Id*. at 363. We fail to see how *Brooks* assists Ms. Thomas here as we note that appellees' Motion to Dismiss was filed long before trial, and therefore, nothing in *Brooks* suggests that appellees' defense was waived.

As previously noted, for a party to prevail on a motion to strike, that party must show prejudice. Ms. Thomas failed to demonstrate that she suffered any prejudice as a result of appellees' late Motion to Dismiss, and, for the reasons stated, we reject her claims that appellees waived their right to invoke the statute of limitations defense. Accordingly, we conclude that the circuit court did not abuse its discretion in denying Ms. Thomas's Motion to Strike.

II. THE CIRCUIT COURT CORRECTLY GRANTED THE MOTION TO DISMISS

Finally, we reject Ms. Thomas's argument that the court erred in granting the Motion to Dismiss. Regarding the appropriate standard for reviewing a motion to dismiss, the Court of Appeals has stated, "When reviewing the grant of a motion to dismiss, the appropriate standard of review is 'whether the trial court was legally correct.'" *D.L. v. Sheppard Pratt Health Sys., Inc*., 465 Md. 339, 350 (2019) (quoting *Blackstone v. Sharma*, 461 Md. 87, 110 (2018)).

In her brief, Ms. Thomas claims that the circuit court erred by failing to treat

appellees' Motion to Dismiss as a motion to strike pursuant to *Patapsco*, 80 Md. App. 200.[6] Specifically, she notes that in *Patapsco* this Court stated in a footnote that "the practical effect of the court's granting of a motion to dismiss, without leave to amend, Md. Rule 2-322(b)(2), is no different than the granting of a motion to strike the entire initial complaint without giving leave to amend, Rule 2-322(e). Both have a preclusive effect under the doctrine of *res judicata*." *Id*. at 204 n.3. Relying on this language, Ms. Thomas argues that we must review appellees' Motion to Dismiss as if it were a motion to strike, and that appellees failed to prove prejudice as a result of Ms. Thomas's complaint being filed beyond the statute of limitations.

We reject Ms. Thomas's argument. *Patapsco* involved a late complaint filed pursuant to Rule 2-326(c) on removal from the District Court to a circuit court. *Id*. at 202-03. Furthermore, this Court never stated that a motion to dismiss based on the defense of limitations must be *treated* like a motion to strike. To the contrary, it is well-settled in Maryland that where "the defense of limitations clearly appear[s] from the face of the complaint[,] the defense [can] properly be raised by a motion to dismiss under Md. Rule 2-322(b)." *Rounds v. Md.-Nat'l Cap. Park & Plan. Comm'n*, 441 Md. 621, 655 (2015) (quoting *Antigua Condo. Ass'n v. Melba Invs. Atl., Inc.*, 307 Md. 700, 711 n.5 (1986)).

Here, the complaint facially demonstrates a violation of the statute of limitations—

[6] This argument is arguably waived as we see no indication that Ms. Thomas raised or argued this point at any time during the proceedings in the circuit court. *See* Md. Rule 8-131(a).

the complaint was filed on August 5, 2021, but the alleged injury occurred on August 3, 2018. We hold that the circuit court did not err in granting appellees' Motion to Dismiss based on the violation of the statute of limitations.[7]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[7] In her brief, Ms. Thomas makes no argument that her complaint was filed within limitations.