

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 40

September Term, 2023

ERIC FREELAND

v.

CLARK CONSTRUCTION GROUP, LLC

Friedman,
Zic,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 6, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority.

In 2020, Eric Freeland, appellant, filed a complaint for negligence against Clark Construction Group, LLC arising from injuries that he suffered after he fell into a manhole at a jobsite where he was a subcontractor. Specifically, he claimed that appellee, who was the general contractor, had been negligent in failing to oversee the job site, failing to provide proper safety notification, failing to secure the manhole, and failing to follow state, local, and federal safety regulations.

On January 4, 2021, appellee propounded its first set of interrogatories and request for production of documents to appellant. When appellant failed to respond, appellee filed a motion to compel, which the court granted on May 19, 2021, requiring appellant to respond to within 15 days. However, appellant did not respond to the appellee’s discovery requests until February 2022. That response, which was unverified, identified one fact witness and indicated that appellant did not intend to call any expert witnesses. Appellant also did not provide any documents to appellee. Thereafter, appellee filed a motion in limine seeking to exclude at trial any evidence that had not been disclosed during discovery including: (1) any testimony from expert witnesses or fact witnesses not disclosed in discovery; (2) any and all documents that he intended to produce at trial; (3) any evidence of his alleged damages; and (4) any evidence of his need for future medical care. Following a hearing, the court granted that motion. Thereafter, it granted appellee’s motion to dismiss, finding that without an expert witness or proof of damages, appellant “could not prove entitlement to any relief as a matter of law.”

The written order granting the motion in limine and dismissing the case was entered on the docket on September 29, 2022. On October 26, 2022, appellant filed a motion for

reconsideration wherein he alleged that he did not need to disclose any expert witnesses because he did not intend to call one at trial, that he had delivered or “disclosed the location” of any documents requested, and that his responses to discovery could be “cured with a new filing.” The court denied the motion for reconsideration on February 8, 2023. Appellant filed a notice of appeal on March 7, 2023.

On appeal, appellant raises three issues: (1) whether he was denied his Sixth Amendment right to confront witnesses; (2) whether the trial court erred in refusing to accept his discovery answers; and (3) whether the court erred in dismissing his case without first issuing an order to compel. For the reasons that follow, we shall affirm.

Following entry of judgment in a trial court, a litigant seeking to revise or modify the order may file one of two post-trial motions: (1) a motion to alter or amend the judgment pursuant to Maryland Rule 2-534; or (2) a motion for the court to exercise its revisory power pursuant to Maryland Rule 2-535. If a motion, however labeled, is filed more than ten days but less than thirty days after the entry of judgment, it will be treated as a motion under Maryland Rule 2-535. *Pickett v. Noba, Inc.*, 114 Md. App. 552, 557 (1997).

Where the circuit court denies a motion to revise under Rule 2-535 and the party appeals that denial more than thirty days after the entry of the underlying judgment, as occurred here, the propriety of the underlying judgment is not before this Court. *Id.* at 558-59. Rather, the only question before this Court is whether the denial of the motion to have that judgment revised was an abuse of discretion. *See Stuples v. Baltimore City Police Dep’t*,

119 Md. App. 221, 240 (1998)¹ An abuse of discretion is defined as “discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *In re Don Mc.*, 344 Md. 194, 201 (1996) (quotation marks and citation omitted).

In his brief, appellant does not contend that the court abused its discretion in denying his motion for reconsideration, the only issue that is properly before us. Therefore, we need not consider that issue on appeal. *See Diallo v. State*, 413 Md. 678, 692-93 (2010) (noting that arguments that are “not presented with particularity will not be considered on appeal” (quotation marks and citation omitted)). But even if appellant had raised that issue, we would find no error.

In his motion to reconsider, appellant acknowledged that he did not have an expert witness. And he did not challenge the court’s finding that he could not prove his case without one. Moreover, he did not indicate why he had not timely complied with the court’s initial order compelling him to respond to appellee’s discovery requests. Consequently, we cannot say that the trial court abused its discretion in declining to exercise its revisory power under the circumstances.

**JUDGMENT OF THE CIRCUIT
COURT FOR MONTGOMERY**

¹ Even if appellant had filed a timely notice of appeal from the underlying judgment, we would not consider his contentions because his brief contains no argument or legal analysis in support of his position. *See* Maryland Rule 8-504(a)(6) (stating that an appellate brief shall contain “[a]rgument in support of the party’s position on each issue”). In any event, we note that appellant’s Sixth Amendment claim is not preserved as it was not raised in the circuit court, *see* Maryland Rule 8-131(a). And it is also meritless as the Sixth Amendment right to confront witnesses does not apply in civil cases. Moreover, his claim that the court erred in dismissing his complaint without first issuing an order to compel is equally meritless as the record indicates that the court issued such an order on May 19, 2021, yet appellant did not timely comply.

**COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**