Circuit Court for Prince George's County
Case No. CAL 19-00612

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0212

September Term, 2020

HUNTLEY SQUARE CONDOMINIUM

v.

AUDREY STEPHENS

Fader, C.J.,
Beachley,
Wilner, Alan M. (Senior Judge,
Specially Assigned),

JJ.

Opinion by Wilner, J.

Filed: March 19, 2021

*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.

This is a dispute between the Board of Directors of the Huntley Square Condominium (the Condominium) and Audrey Stephens, the owner of a unit in the Condominium, over whether Ms. Stephens should be allowed to keep a pit bull terrier in her unit. The Circuit Court for Prince George's County, by modifying an injunction it previously had issued, has allowed her to keep the dog under certain conditions, and the Condominium has appealed, complaining about both the procedure the court used in reaching its ultimate decision and the substantive correctness of that decision. For reasons we shall explain, we shall dismiss the appeal.

BACKGROUND

The immediate genesis of this case was an event that occurred on October 15, 2018 when, as alleged by the Condominium, Ms. Stephens and her dog, whose name is Polo, entered the condominium management office, where Polo attacked and injured the President of the condominium's Board of Directors, Mr. Robinson. Ms. Stephens has denied that allegation, although it appears that a physical altercation of some kind occurred, as Mr. Robinson obtained a peace order against Ms. Stephens and Polo and Ms. Stephens filed criminal charges against Mr. Robinson.

According to the Condominium, that was exacerbated by two further incidents involving the dog. On November 23, 2018, Polo was observed roaming the Condominium property without a leash, and seven days later, while Condominium workmen were replacing panels outside Ms. Stephens's unit, she started yelling at them and threatened to let the dog out. All of this led the Condominium, on December 3,

2018, and again on January 3, 2019, to demand that Ms. Stephens remove Polo from the Condominium property, on the twin grounds that (1) a Prince George's County ordinance (Section 3-185.01(a) of the Prince George's County Code) prohibited persons from owning, keeping, or harboring a pit bull in the county, and (2) the dog was a dangerous nuisance, and keeping the dog was in violation of both county law and Condominium bylaws.

When Ms. Stephens refused to remove Polo, the Condominium, on January 25, 2019, filed this action for breach of contract, civil assault, and breach of the county ordinance, seeking injunctive relief, removal of the dog by the sheriff, compensatory and punitive damages, costs, and attorneys' fees. Although she initially denied ever being served with the complaint, Ms. Stephens later admitted, and the evidence clearly showed, that she was personally served on February 25, 2019. She claimed that she thought the papers she got pertained to another matter and did not read them.

On April 2, 2019, no response having been filed, the Condominium moved for an Order of Default pursuant to Md. Rule 2-613. That motion was granted on April 30. On May 3, 2019 – the date when that Order was actually filed – the Clerk sent a Notice to Ms. Stephens that an Order of Default had been entered against her and that the case had been set for an *ex parte* hearing on July 5, 2019. She was later notified by the Clerk that the hearing had been rescheduled for July 12, 2019.

On June 25, Ms. Stephens filed a motion to vacate the order of default, claiming, under oath, that she was never served with a copy of the complaint, had no knowledge

that one had been filed, and that she never used Polo in a threatening manner. She also asserted that Polo was a registered "service dog" to assist her with her health concerns. In that regard, she averred in an affidavit that she suffers from epilepsy, that Polo is an American Bulldog/Pitbull Terrier mix who is used as a U.S. registered service dog, and that the dog had never been used in a threatening or forceful manner. Attached to her motion was a copy of a certificate that Ms. Stephens, as the "Handler" of this registered service dog, identified as Polo, "meets one of the requirements under ADA Americans with Disabilities Act, Fair Housing Act, Air Carrier Act or the Rehabilitation Act of 1973" and that "[t]he Service Dog and Handler qualify for Full Access to all Public Places."

The Condominium responded that (1) the motion to vacate was untimely, and (2) Ms. Stephens was, in fact, served with the Complaint on February 25, 2019. The first point was based on Md. Rule 2-613(d), which requires that a motion to vacate an order of default be filed within 30 days after entry of the order. As to the second, it attached an affidavit of the process server attesting to personal service of the Complaint on February 25 and a separate notice to Ms. Stephens's attorney that such service had been made.

The court held what was supposed to be an *ex parte* hearing on damages on July 12, 2019, but at which Ms. Stephens and her attorney were present. The attorney requested a continuance, which was denied. After a bit of wrangling, the court concluded that the motion to vacate was not "ripe," but Ms. Stephens was entitled to have it heard at

some point. The hearing that day would be an *ex parte* one on damages but would be subject to a subsequent disposition of the motion to vacate.

During the hearing, evidence was admitted through the Condominium President, Mr. Robinson, that, under the Condominium regulations, unit owners were allowed to have pets but not pit bulls, and that no pets are permitted in the Condominium office. Mr. Robinson described a number of run-ins with Ms. Stephens and Polo, including the incident that led to the peace order proceeding, during which Ms. Stephens admitted that the dog was a pit bull.

At the conclusion of the hearing, the court again concluded that the motion to vacate was "not ripe for consideration" and no findings would be made regarding it. The court took note of the county ordinance banning the possession of pit bulls and, putting aside, as "another question" whether that ordinance was Constitutional, said that it was "on the books" and that "this Court must enforce [it]." The court said that it would deny punitive damages and "general injunctive relief," but would award $16,530 in attorneys' fees to the Condominium. Nothing was said about the request for compensatory damages.

Four days later, on July 16, the court entered an order generally consistent with its oral pronouncements. The Order enjoined Ms. Stephens from possessing any pit bull terrier on the Condominium premises, directed that she remove Polo by July 27, 2019, and granted the Condominium $16,530 in attorneys' fees. The court stayed the injunctive order pending a ruling on the motion to vacate the order of default, subject to Ms.

Stephens (1) filing with the court a copy of the dog license required by § 3-145 of the County Code, and (2) keeping any pit bull muzzled at all times the animal leaves the interior of Ms. Stephens's unit and on a leash whenever the animal crosses or is anticipated to leave the unit. The Order granted the request for attorneys' fees in the amount of $16,530 and stated that any relief not specifically granted was denied. As no mention was made of the request for compensatory damages, presumably that request was denied.

On August 2, 2019, Ms. Stephens filed a response to the Condominium's opposition to her motion to vacate the default and requested a hearing on her motion. An evidentiary hearing on that motion was held on September 20, 2019, supposedly limited to whether and when Ms. Stephens was served with the Complaint but that extended beyond that narrow issue.

Ms. Stephens admitted that she had been served with the Complaint and summons but did not read the papers because she thought they pertained to another matter. Though insisting that "we're here on service alone," the court allowed her to testify that she has epilepsy, that most of her seizures are at night while she is sleeping, and that she had trained Polo to wake her when she is having a seizure and get underneath her so her head does not hit the floor. Over the Condominium's objection, the court admitted a card documenting Polo's registration. At the end of the hearing, the court expressed an uncertainty whether, in the absence of any evidence of fraud, it had discretion to ignore

the fact that the motion to vacate had not been timely filed but stated that it intended to do some further research.

All of this came to a head on February 5, 2020, when, in a Memorandum Order signed that day but not filed until three weeks later (February 26, 2020), the court found that (1) no basis existed to vacate the order of default due to lack of proper service of the Complaint, (2) there was no justification for the late filing of Ms. Stephens's motion to vacate the order of default, and (3) there was no evidence of mistake or irregularity that could serve as a basis for reopening the order of default. The court concluded, however, that those procedural defaults, ordinarily fatal, did not end the matter. The court noted that it had issued a permanent injunction, temporarily stayed, that precluded Ms. Stephens from keeping in her unit a service dog important, and perhaps critical, to her health, that an injunction is an equitable remedy, and that the court had inherent authority, acting as an equity court, to modify that injunction as "conditions of justice may require."

In that regard, the court focused on the Americans With Disabilities Act (ADA) and regulations thereunder that define and provide for assistance from service animals. Citing references to that Act and Federal cases construing it, the court concluded that municipal breed-specific bans are preempted with respect to service animals and that such animals may be excluded from public places or public services only when the animal was out of control or not housebroken. Although noting the one incident when Polo allegedly attacked Mr. Robinson, the court determined that one incident, as to which

the evidence as to what occurred was in dispute, was insufficient "to permanently overcome [Ms. Stephens's] statutory civil rights" and would "disproportionately punish [her] for a single transgression."

Upon those conclusions, the court (1) denied the motion to vacate the order of default, (2) denied the Condominium's motion to strike Ms. Stephens's supplement to her reply to the Condominium's opposition to her motion to vacate, and (3) pursuant to the court's "inherent authority to ensure the ends of justice are met," modified the previously issued (and stayed) injunctive order to require only that Ms. Stephens, at all times, keep Polo registered and licensed with the county, muzzled when in public areas of the condominium, and leashed when in public areas of the condominium. The court further decreed that, upon any failure of Ms. Stephens to comply with those requirements, the Condominium could petition the court for a further Order, including authorization for the sheriff to enter her residence and seize the dog. With that, the court ordered that the case be closed statistically.

Aggrieved at that result, the Condominium, on February 18, 2020, filed a motion pursuant to Md. Rule 2-534 to reconsider that Order, arguing that (1) the ADA did not apply to the Condominium, which was a "private residential community" and not a public entity, (2) there was no proof that Ms. Stephens was disabled or needed Polo as a service dog, (3) further discovery was needed, and (4) the final order did not provide the Condominium with an opportunity to address relevant underlying facts bearing on whether Ms. Stephens was entitled to an accommodation under the ADA. It asked that

the case be reopened for further discovery and further hearings. Ms. Stephens responded to that motion.

On March 25, 2020, the court filed a peculiar Order which stated that the court was "not inclined to reconsider its Memorandum Order" that was filed February 26, 2020 but that, because the Condominium was requesting that it be permitted to engage in discovery on the issues of [Ms. Stephens's] purported disability and the need for a service animal," the case "is set for a scheduling conference before the undersigned on Friday April 24, 2020 at 1:30 p.m." It does not appear from the docket entries that that conference, or any other proceeding in the trial court, has ever occurred, and counsel for the Condominium confirmed that at oral argument. This appeal was filed on April 15, 2020.

DISCUSSION

We have before us the record, the Condominium's brief, and the record extract, but no brief from Ms. Stephens. We also have before us the dilemma of figuring out what exactly is before us. It seems clear that the court intended for its February 5 (26) Order to be a final judgment. It previously had denied all monetary relief other than attorneys' fees, which left open only the scope of injunctive relief. It had found no basis for granting Ms. Stephens's motion to vacate the order of default, and it closed the case statistically. The Condominium could have taken an appeal from that Memorandum

Order and may have had a basis for doing so. Md. Rule 15-502 (f) permits a party or a person affected by a final injunction to move for modification of the injunction but says nothing about the court doing so *sua sponte* without giving the parties an opportunity to be heard. Even if the court had authority to do that, the issue could be raised whether it would have abused its discretion in doing so when it had not accorded the Condominium the opportunity to present evidence contesting Ms. Stephens's claim of disability and her need for a service dog. Ms. Stephens's only testimony regarding that was at a hearing supposedly limited to the issue of whether, when, and how she was served with the Complaint and whether to excuse the untimely filing of her motion to vacate.

Instead of filing a timely appeal, however, the Condominium chose to file a motion to reconsider the February 5 (26) order, which it had a right to do. The motion was filed pursuant to Md. Rule 2-534, which permits a motion to "open the judgment to receive additional evidence" or amend the judgment. As noted, that motion was filed on February 18, 2020.[1] The thrust of the motion was the request that the court "[r]eopen this case by ordering discovery and a further hearing regarding Ms. Stephens's disability-related claims." The Order did not go so far as to order discovery but it unequivocally

[1] Rule 2-534 permits a motion to alter or amend a judgment and reopen the case to be filed within ten days after "entry" of the judgment, which occurs when the clerk enters the judgment on the electronic case management system docket (Rule 2-601 (d)), which did not occur until February 26. Rule 2-534 provides further, however, that a motion to alter or amend filed after announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket. We thus treat the Condominium's motion filed on February 18 as if it had been filed on February 26.

reopened the case to permit consideration of that request. In doing so, it necessarily kept the case alive to further explore the Condominium's claims. When the appeal was filed, there was no final judgment. There was an injunction in effect – the one entered on February 26 – and Md. Code, Courts & Jud. Proc. Article, § 12-303 (3) permits an appeal from an interlocutory injunction or the dissolving of one, but the appeal from that order was not filed until April 15, well beyond the 30-day limit imposed by Md. Rule 8-202. We therefore shall dismiss the appeal and remand the case for such further proceedings as the parties may choose to pursue.

APPEAL DISMISSED; APPELLANT TO PAY THE COSTS.