Circuit Court for Howard County
Case No. C-13-CV-20-000356

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 228

September Term, 2021

SAMPSON SARPONG

v.

KELLY DORSEY, P.C.

Beachley,
Shaw,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 20, 2022

The appellant, Sampson Sarpong, appeals from a grant of summary judgment in favor of the appellee, Kelly Dorsey, P.C. ("Kelly Dorsey"). He presents four questions for our review, which we have consolidated and rephrased as follows:

> Did the court err in failing to dismiss the action against Mr. Sarpong for insufficient service of process?

We answer this question in the negative, and shall therefore affirm the judgment of the circuit court.

BACKGROUND

On April 16, 2020, Kelly Dorsey filed a complaint in the Circuit Court for Howard County against Mr. Sarpong for breach of contract and *quantum meruit*, seeking to recover unpaid legal fees allegedly owed for professional services rendered on his behalf. In its complaint, Kelly Dorsey claimed that Mr. Sarpong had retained the law firm on or around June 3, 2016, to represent him in litigation against Fairwood Office Park LLC. According to Kelly Dorsey, approximately two weeks later, Mr. Sarpong again hired the law firm to represent him in a "licensing matter." Although Kelly Dorsey represented Mr. Sarpong in both matters through April 15, 2019, and sent him invoices for the work it had performed, Mr. Sarpong allegedly "last paid for services on the Licensing matter on June 4, 2019, and last paid for services on the Litigation matter on August 16, 2017," leaving an outstanding balance of $129,632.58.

On April 17, 2020, the circuit court clerk issued a writ of summons for Mr. Sarpong. In an affidavit filed on May 13, 2020, Kelly Dorsey's private process server averred that he attempted to serve Mr. Sarpong on four occasions at three different addresses, but he

was unable to effectuate service. After the summons became dormant, Kelly Dorsey filed a "Line to Request Renewal of Summons." The clerk reissued a writ of summons on July 23, 2020, but it likewise expired before service could be effectuated. On November 19, 2020, Kelly Dorsey filed a second request to reissue summons, which the clerk granted that same day. In an affidavit executed on November 24 and filed on December 1, Kelly Dorsey's process server, H. Austin Sheppard II, affirmed under penalty of perjury that:

> [H]e executed service of process upon Sampson Sarpong aka Samson Sarpong on Monday, November 23, 2020, at 10:37 am, at his residence, 16407 Eves Court, Columbia MD, by delivering to and leaving with him personally, a copy of the Writ of Summons, Complaint, Scheduling Order and Civil—Non-Domestic Case Information Report. Samson Sarpong is Black, 64 years old, 5'6", 140 lbs with an afro.[1]

(Emphasis removed).

At 9:51 a.m. on December 28, 2020, Mr. Sarpong, as a self-represented litigant, filed a "Motion to Set Aside Scheduling Order" and a "Motion to Oppose Complaint." The former motion was supported neither by argument nor by affidavit. In the "Motion to Oppose Complaint," Mr. Sarpong alleged that Kelly Dorsey had both (i) fraudulently represented itself as an expert in "licensing issues and litigation matters" and (ii) defied Mr. Sarpong's wishes to participate in settlement negotiations, electing instead to proceed directly to court. Mr. Sarpong asked the court to "enter judgement of misrepresentation by

[1] In its complaint, Kelly Dorsey spelled Mr. Sarpong's first name "Samson." In a line filed on December 1, 2020, Kelly Dorsey asked the clerk to change Mr. Sarpong's name to "Sampson Sarpong a/k/a Samson Sarpong," explaining that he had "held out his name to be Samson Sarpong[.]" Kelly Dorsey later discovered that appellant's first name is spelled "Sampson."

plaintiff Kelly Dorsey in favor of Sampson Sarpong" and grant any other relief that the court deemed proper.[2]

Approximately six hours after submitting his motions, Mr. Sarpong attempted to file (i) an amended "Motion to Set Aside Scheduling Order," in which he denied having been served, and (ii) an "Affidavit of Improper Service," wherein he averred: "16407 Eves Court, Columbia, Maryland is not my residence." However, the court clerk rejected and returned those filings because Mr. Sarpong had failed to sign the certificates of service appended thereto.[3] After signing the certificates of service, Mr. Sarpong resubmitted the amended motion and affidavit, both of which were accepted and docketed on January 7, 2021.

On January 25, 2021, Kelly Dorsey filed a motion for summary judgment and supporting memorandum, wherein it reasserted the allegations set forth in its complaint. Accompanying that motion were copies of unpaid invoices and an affidavit signed by Kelly Dorsey's president and custodian of records, in which he averred that Mr. Sarpong owed $129,632.58 in outstanding legal fees. Mr. Sarpong responded with an "Answer to Complaint" and a "Motion of Lack of Service and Setting Aside Scheduling Order," both

[2] Contemporaneous with those motions, Mr. Sarpong filed a certificate of service that stated he had sent a copy of a "squash of service" to Kelly Dorsey's counsel by first-class mail, postage prepaid. There is nothing in the record to indicate that a "squash of service" was ever filed.

[3] Mr. Sarpong likewise failed to sign the amended motion to set aside the scheduling order.

of which he filed on February 10, 2021. The latter motion read, in pertinent part:

> I was not at 16407 Eves Court, Columbia, Maryland on Monday, November 23, 2020 at 10:37am to receive the Summons, Complaint, Scheduling Order and Civil-Non Domestic Case Informaton [sic] Report of the above captioned case as alleged by H. Austin Sheppard II in the affidavit of service.
>
> I have never resided at 16407 Eves Court, Columbia, Maryland.
>
> For the foregoing reasons I *request the honorable court to set aside the scheduling order dated 4/17/2020*.

(Emphasis added). The court denied Mr. Sarpong's motion in an order entered on February 22, 2021, reasoning:

> Upon review of the file, [Mr. Sarpong's] two previous Motions to Set Aside Scheduling Order were denied on January 20, 2021 and January 28, 2021, respectively. Since the prior motions claiming lack of service were denied, [Mr. Sarpong] did not file a motion to dismiss, and [Mr. Sarpong] has since filed an [a]nswer, [Mr. Sarpong] is precluded from further claiming insufficient service of process. *See* Md. Rule 2-322(a) (stating that the defense of insufficiency of service of process must be made by motion to dismiss filed before the answer, and, if not so made, the defense is waived).

That same day, the court entered a "Memorandum Opinion and Order," in which it granted summary judgment in favor of Kelly Dorsey for breach of contract and declared the *quantum meruit* claim moot.

Apparently undeterred by the court's judgment, Mr. Sarpong filed motions to strike service of process and for reconsideration on March 1, 2021,[4] in both of which he alleged

[4] By filing his motion for reconsideration within ten days of the entry of summary judgment, Mr. Sarpong stayed the deadline for filing an appeal of that order. Md. Rule 8-202(c); *see also Pickett v. Noba, Inc.*, 122 Md. App. 566, 570 (1998). As such, his notice of appeal encompasses the court's grant of summary judgment.

that Kelly Dorsey had committed fraud by filing a false affidavit of process. The court denied those motions by orders entered on March 26, 2021.

DISCUSSION

Mr. Sarpong contends that the court erred in determining, pursuant to Rule 2-322(a),[5] that he waived the defense of insufficient service of process by failing to file a motion to dismiss before submitting his answer. Specifically, he asserts that the court misconstrued his motions to set aside the scheduling order (collectively, "the Motions") according to their captions rather than their substance. He argues that, although captioned as procedural pleadings, they were truly preliminary motions to dismiss for lack of service. Accordingly, he asks that we reverse the circuit court's denial of the Motions and vacate its grant of summary judgment in favor of Kelly Dorsey. We decline to do so.

"We review the denial of a motion to dismiss de novo," *Myers v. State*, 248 Md. App. 422, 431 (2020), and "will affirm the circuit court's judgment 'on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.'" *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015) (quoting *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 385 (2009)); *see*

[5] Rule 2-322(a) provides:

> (a) The following defenses shall be made by motion to dismiss filed before the answer, if an answer is required: (1) lack of jurisdiction over the person, (2) improper venue, (3) insufficiency of process, and (4) insufficiency of service of process. If not so made and the answer is filed, these defenses are waived.

also Gomez v. Jackson Hewitt, Inc., 427 Md. 128, 142 (2012) ("The grant of a motion to dismiss may be affirmed on 'any ground adequately shown by the record, whether or not relied upon by the trial court.'" (quoting *Parks v. Alpharma, Inc.*, 421 Md. 59, 65 n.4 (2011))).

As a preliminary matter, we will address the premise that the Motions were, in substance, preliminary motions to dismiss for insufficient service of process filed pursuant to Maryland Rule 2-322(a). Mr. Sarpong relies, in part, on our opinion in *Corapcioglu v. Roosevelt*, 170 Md. App. 572 (2006), in support of his claim that "it was obvious to any reasonable person that Mr. Sarpong's preliminary filing was a motion to dismiss due to insufficient service of process." Mr. Sarpong's reliance on *Corapcioglu* is misplaced.

During the pendency of a child custody proceeding, the defendant in that case abducted the parties' minor son and absconded to Turkey. *Id.* at 580. Over the ensuing two years, the plaintiff expended $352,930 to secure primary physical and sole legal custody of her son. *Id.* at 588. After her son had been returned to her care, the plaintiff filed what she titled a "motion for child support," wherein she asked the court to award her "a lump-sum amount of child support equal to the sums she had expended in securing [her son's] return from Turkey." *Id.* at 587. The court treated the plaintiff's pleading as a motion for costs and attorney's fees rather than as a motion for child support. *Id.* at 588. On appeal, the parties challenged the court's interpretation of the plaintiff's motion. We affirmed, reasoning:

> In substance, [the plaintiff's] motion was a request for an award to reimburse her for the counsel fees and costs she had incurred in securing [her son's] return from Turkey; notwithstanding its label, the motion was not a request for child support. Accordingly, the court did not err in *sua sponte* treating the motion as one made pursuant to [Family Law Article] section 12-103.

Id. at 591.

As is clear from our holding in *Corapcioglu*, a court must construe a paper or pleading according to its substance rather than its caption or form. That principle does not, however, negate the requirement that a moving party state with particularity the relief sought by his or her motion. *See Reichs Ford Rd. Joint Venture v. State Rds. Comm'n of the State Highway Admin.*, 388 Md. 500, 509 (2005) ("A written motion must state its premises and relief sought *with particularity.*"); Md. Rule 2-311(a) ("An application to the court for an order shall be by motion which . . . shall set forth the relief or order sought."). Indeed, the substance of a motion is precisely the relief sought therein. *See Miller v. Mathias*, 428 Md. 419, 442 n.15 (2012) ("[W]hen motions and other pleadings are considered by a trial judge, it is the *substance* of the pleading that governs its outcome, and not its *form*. In other words, *the nature of a motion is determined by the relief it seeks* and not by its label or caption." (emphasis added) (quoting *Hill v. Hill*, 118 Md. App. 36, 44 (1997))); *see also Lawson v. Stephens*, 900 F.3d 715, 718 n.6 (5th Cir. 2018) ("Courts will construe a motion, however styled, to be the type proper for the relief requested." (quoting 5 Am. Jur. 2d *Appellate Review* § 269 (2018)).

Under these principles, the purported mistitling of the Motions is not fatal to Mr.

Sarpong's claim. Nevertheless, Mr. Sarpong failed to request dismissal in any of the three Motions he filed prior to filing his answer. In his Motion to Set Aside Scheduling Order filed on December 28, 2020, Mr. Sarpong requested no relief apart from the titling of his motion. In his amended Motion to Set Aside Scheduling Order filed on January 7, 2021, the sole relief Mr. Sarpong sought was for the court "to set aside the scheduling order." And in his Motion of Lack of Service and Setting Aside Scheduling Order filed on February 10, 2021, he requested, "For the foregoing reasons, I request the honorable court to set aside the scheduling order dated 4/17/2020." In neither legal nor common parlance does that requested relief amount to a request for dismissal. Thus, Mr. Sarpong failed to move for dismissal based on insufficiency of service of process prior to the filing of his answer on February 10, 2021. Accordingly, pursuant to Rule 2-322(a), Mr. Sarpong waived any insufficiency of service of process defense.[6]

Even if we were to assume that the Motions were, in substance, motions to dismiss based on insufficiency of service of process, we would nevertheless affirm the court's ultimate denial of his motions because the evidence before the court would not have permitted a finding that Mr. Sarpong had not been properly served.

[6] Applying the well-settled proposition that it is the substance of a pleading that is dispositive, we note that Mr. Sarpong's "Motion to Oppose Complaint" filed on December 28, 2020, substantively appears to qualify as an answer to the complaint. Under that interpretation, the insufficiency of service of process defense would have been waived under Rule 2-322(a) because Mr. Sarpong unequivocally did not raise that defense in his Motion to Set Aside Scheduling Order also filed on December 28, 2020.

"[W]hether a person has been served with process is essentially a question of fact." *Peay v. Barnett*, 236 Md. App. 306, 316 (2018) (quoting *Wilson v. Md. Dep't of Env't*, 217 Md. App. 271, 286 (2014)). A process server's affidavit of service is *prima facie* evidence of proper service. *See Weinreich v. Walker*, 236 Md. 290, 296 (1964) ("[A] proper official return of service is presumed to be true and accurate until the presumption is overcome by proof."); *Wilson*, 217 Md. App. at 285 ("A proper return of service is *prima facie* evidence of valid service of process[.]"). Although that presumption may be rebutted, "the mere denial of personal service by him who was summoned will not avail to defeat the sworn return of the official process server." *Weinreich*, 236 Md. at 296. Rather, a denial of service will only stand if supported by strong and unrefuted "corroborative evidence by independent, disinterested witnesses[.]" *Wilson*, 217 Md. App. at 285 (quoting *Ashe v. Spears*, 263 Md. 622, 628 (1971)). A conclusory denial alone is insufficient to raise a genuine issue of disputed fact.

On November 24, 2020, a private process server executed an affidavit of service declaring under penalty of perjury that on November 23, 2020, he had personally served Mr. Sarpong with a copy of the summons, the complaint, and the scheduling order at his residence located at 16407 Eves Court. That affidavit contains a detailed description of Mr. Sarpong. The only evidence Mr. Sarpong submitted in support of the Motions was a signed affidavit in which he declared, "16407 Eves Court, Columbia, Maryland is not my residence." Absent corroborative testimony from disinterested witnesses, Mr. Sarpong's unadorned, self-serving affidavit did not rebut the presumption created by the process

server's affidavit of service, in which he averred that Mr. Sarpong was properly served.

For the foregoing reasons, we hold that the court did not err in determining that Mr. Sarpong waived any defense for insufficiency of service of process. We therefore affirm the grant of summary judgment in favor of Kelly Dorsey.

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