Circuit Court for Wicomico County
Case No. C-22-CV-17-000326

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 233

September Term, 2018

VALERIE ROVIN

v.

STATE OF MARYLAND, ET AL.

Wright,*
Nazarian,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 17, 2020

*Wright, J., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Maryland Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

In the Circuit Court for Wicomico County, summary judgment was granted in favor of appellees, various State and County officials,[1] against appellant, Valerie Rovin, on her complaint for claims for false arrest, false imprisonment, malicious prosecution, false light invasion of privacy, defamation, intentional infliction of emotional distress, and a violation of Article 24 of Maryland's Declaration of Rights.

Because we hold that denial of appellant's discovery requests before granting summary judgment was an abuse of discretion, we shall remand this matter to the trial court for further proceedings.

FACTUAL BACKGROUND

Criminal Proceedings – State v. Valerie Rovin

In June 2015, Robert Rovin, a citizen of Wicomico County, was called to jury service in the circuit court and, by happenstance, was seated as foreman of the jury in the case of *State of Maryland v. Lauren Bailey*. Ms. Bailey is the daughter of appellant, Valerie Rovin. Robert Rovin and Valerie Rovin, although casually acquainted, are not related. On June 16, 2015, the jury of which Robert Rovin was foreman returned guilty verdicts against Ms. Bailey, and she was sentenced to a term of incarceration the same day.

[1] Appellees are: The State of Maryland; Wicomico County State's Attorney's Office; Matthew Maciarello in his official capacity as the State's Attorney for Wicomico County; Richard Brueckner in his official capacity as an Assistant State's Attorney for Wicomico County; Wicomico County Sheriff's Office; Michael Lewis in his official capacity as Sheriff of Wicomico County; and Matthew Cook in his official capacity as a Deputy Sheriff for Wicomico County. At the time the lawsuit was filed, Matthew Maciarello had been appointed as an Associate Judge for the Wicomico County Circuit Court.

Later that day, following the verdict, discharge of the jury, and sentencing, appellant visited Robert Rovin at his place of employment, Mitchell's Martial Arts in Salisbury, because, as she asserted in her complaint, she "was upset that her daughter had been convicted, and that a fellow Rovin had served as foreman of the jury." As a result of that encounter, after appellant left the premises Robert Rovin called the Wicomico County Sheriff's Office, and Deputy Sheriff Matthew Cook responded to the call. Appellant and Robert Rovin disagree as to the tone and nature of the discussion in his office on that day. In her complaint, appellant describes a "conversation," while Robert Rovin's account of the encounter, as presented in Deputy Cook's Application for Statement of Charges, claimed that appellant was "verbally assaultive" with "erratic and aggressive behavior," that he "felt very uncomfortable and threatened" and that appellant made an "indirect death threat." The Application for Statement of Charges also states that Deputy Cook "attempted to contact [appellant] to warn her not to continue her tactics with [Robert Rovin] and to verbally ban her from the property of Mitchell's Martial Arts[,]" and left a message when she did not answer.

Robert Rovin, based on his description of the event and at the request of the State's Attorney, the next day sought a peace order from the District Court, which was denied following a hearing (Wade, J.). During the hearing, he asserted that appellant "showed up and threatened bodily harm at my place of work, threatened to have somebody come in from out of town … to cause me bodily harm." However, Robert Rovin conceded that appellant did not assault him or threaten to personally cause him harm. Finding that appellant's conduct did not fit within any of the nine grounds for which relief can be

afforded, Judge Wade ruled that Robert Rovin had not articulated a basis for relief and denied relief. Nonetheless, the court opined *sua sponte* that other relief might be available because "there's a statute, it's a criminal offense to intimidate a juror[,]" and if appellant had done what was alleged, "that may very well be a criminal offense."[2]

Acting on that suggestion Robert Rovin again met with Deputy Cook who, on the advice of the State's Attorney's Office, applied to the District Court for a statement of charges alleging juror intimidation. Deputy Cook later consulted with Matthew Maciarello, the State's Attorney for Wicomico County at the time, and Richard Brueckner, an Assistant State's Attorney, about any further action to be taken. A District Court Commissioner approved the statement of charges and an arrest warrant was issued for appellant, charging her with a single count of intimidation of a juror, in violation of Maryland Code (2002, 2012 Repl. Vol.) Criminal Law Article (CL), § 9-305(a), which provides:

> (a) A person may not, by threat, force, or corrupt means, try to influence, intimidate, or impede a juror, a witness, or an officer of a court of the State or of the United States in the performance of the person's official duties.

On June 18, 2015, the day of the issuance of the arrest warrant, appellant was arrested at her home. She was taken to the Wicomico County Detention center where she

[2] We are not called upon in this appeal to consider whether appellant's conduct, *vis-à-vis* Robert Rovin, amounted to a violation of Maryland Code (2002, 2012 Repl. Vol.) Criminal Law Article, § 9-305(a)—juror intimidation—which proscribes conduct designed to "influence, intimidate, or impede a juror," when the conduct complained of occurred after judgment was entered and the jury discharged in the case in which the judgment had been entered. Similarly, we do not take issue with Judge Simpson's grant of the defense motion for judgment of acquittal at the end of the prosecution's case, *State v. Valerie Rovin*.

was processed and detained through June 19, or as she asserts, for 27 hours. Appellant was released on $30,000 bond, and the court ordered both electronic monitoring and pre-trial supervision. The court also, as conditions of release, required appellant to disconnect her cell phone and ordered that she not use a computer pending trial.

On July 9, 2015, the State's Attorney filed a criminal information charging appellant with second-degree assault[3] based on her confrontation with Robert Rovin, in addition to the pending juror intimidation charge.

The criminal charges came on for trial before a jury on October 7, 2015. At the close of the State's case-in-chief, the court (Simpson, J.) granted appellant's motion for judgment of acquittal as to both counts, finding, as a matter of law, that her conduct involving Robert Rovin did not constitute either juror intimidation or assault.

Civil Proceedings

The instant litigation ensued when, on July 26, 2017, as we have noted, Ms. Rovin filed suit against appellees.

[3] Second-degree assault is codified under CL § 3-203(a), providing that "[a] person may not commit an assault[,]" which is defined as encompassing "the crimes of assault, battery, and assault and battery, [and] which retain their judicially determined meanings." CL § 3-201(b).

We have explained that the "judicially determined" meaning of second-degree assault of the intent-to-frighten variety to be "where: (1) 'the defendant commit[s] an act with the intent to place [a victim] in fear of immediate physical harm;' (2) 'the defendant ha[s] the apparent ability, at [the] time, to bring about the physical harm;' and (3) '[t]he victim [is] aware of the impending' physical harm." *Thompson v. State*, 229 Md. App. 385, 413 (2016) (citation omitted).

Appellant's complaint was in seven counts under the Maryland Tort Claims Act (MTCA),[4] including: Count I, false arrest; Count II, false imprisonment; Count III, malicious prosecution; Count IV, violation of Article 24 of the Maryland Declaration of Rights; Count V, false light invasion of privacy; Count VI, defamation; and Count VII, intentional infliction of emotional distress. No exhibits were included or attached to the complaint.

In response to the complaint, appellees moved for dismissal, or in the alternative, summary judgment asserting several defenses, including statutory and common law immunity for the State and individual appellees.[5] Attached to their respective motions, appellees included exhibits to support their immunity defenses.[6] In a response to each

[4] The MTCA has been codified in the Maryland Code (1984, 2014 Repl. Vol.), State Government Article (SG), §§ 12-101 through 12-110. Pursuant to SG § 12-104(a), the State has waived immunity for tortious actions, subject to the limitations described in Maryland Code (1974, 2013 Repl. Vol.), Courts and Judicial Proceedings Article (CJP), § 5-522(a), which provides, in relevant part, that the State's immunity is not waived for "[a]ny tortious act or omission of State personnel that: (i) Is not within the scope of the public duties of the State personnel; or (ii) Is made with malice or gross negligence[.]" CJP § 5-522(a)(4)(i)–(ii). Further, State personnel "are immune from suit … and from liability in tort for a tortious act or omission that is within the scope of [their] public duties … and is made without malice or gross negligence, and for which the State or its units have waived immunity …." CJP § 5-522(b). *See also* SG § 12-105.

[5] Below, and in this appeal, the State of Maryland, the Sheriff's Office, the State's Attorney's Office, the State's Attorney, and the Assistant State's Attorney have appeared together ("State-appellees") and are represented jointly by the Attorney General. However, the Sheriff and Deputy Sheriff appeared separately ("Sheriff-appellees") and are represented jointly by private counsel. Unless noted otherwise, reference to "appellees" in this opinion refers to all appellees, collectively. State-appellees filed their dispositive motion on August 11, 2017, and Sheriff-appellees filed their motion on September 9, 2017.

[6] Namely, State-appellees included: a copy of Robert Rovin's peace order hearing transcript; a copy of the Application for Statement of Charges; a copy of the Sheriff's

dispositive motion, and supported by her affidavit, appellant contested appellees' characterization of the complaint and the circumstances of the incident. Further, she denied applicability of their immunity arguments because appellees were not being sued in their individual capacity, and proffered the need for discovery.[7]

On November 22, 2017, appellant propounded an initial request for production of documents. Six days later, in response, State-appellees filed a motion for protective order to protect them from producing any of the requested discovery pending the disposition of their dispositive motion.

Following the pretrial motions hearing, the court (Bowman, J.) granted the protective order and held disposition of the two dispositive motions *sub curia*. On February 10, 2018, the motions court entered its Opinion and Order of Court granting summary judgment[8] in favor of appellees, finding no dispute of material fact and ruling that (1) "the State has not waived its immunity" and, thus, appellant was "precluded from filing suit

Office press release with a supporting affidavit by the Lieutenant Deputy Sheriff responsible for its drafting; a copy of the Delmarva Now news article; a copy of the charges by criminal information; and excerpts of the criminal trial transcript. Sheriff-appellees' motion also included a copy of the Statement of Charges and the executed arrest warrant.

[7] In addition to her opposition to the Sheriff-appellees' dispositive motion, appellant moved to strike the motion, asserting that the lawsuit was against the State only and that the Sheriff-appellees are not parties entitled to seek relief. Appellant's motion to strike was denied during the pretrial motions hearing.

[8] In its written opinion, the motions court recognized that the Sheriff-appellees had also filed a dispositive motion but concluded that the only the State-appellees' motion will be addressed because it "will necessarily resolve the suit in its entirety, and will render the [Sheriff-appellees' motion], moot."

against [it]"; (2) "no impropriety existed on the part of State's Attorney's Office officials or the Sheriff's Office officials in the prosecution against [appellant][,]" and, thus, they "enjoy immunity" for counts 1 through 5; (3) the Sheriff's comments were not false and he was permitted to make such comments to the media in his official duty; and (4) there was no "outrageous or extreme conduct" by appellees to support a claim for intentional infliction of emotional distress. Appellant's Motion to Alter or Amend was denied and this timely appeal was noted.

In her opening brief, appellant presented six questions, which we have distilled to two:[9]

[9] In her opening brief, appellant asks:

1. Whether the circuit court erred by misinterpreting the term "malice" as used in the Maryland Tort Claims Act ("MTCA") and confusing it with other types of malice recognized in Maryland law.

2. Whether the circuit court erred by *sua sponte* ruling that common law immunity precluded Ms. Rovin's constitutional and intentional tort claims, despite a century of Maryland jurisprudence holding that such immunity is inapplicable to constitutional and intentional tort claims.

3. Whether the circuit court erred in granting summary judgment in favor of defendants based on its reading of implied exceptions into the MTCA which are non-existent and which contradict the MTCA's terms and related jurisprudence.

4. Whether the circuit court erred by granting summary judgment against Ms. Rovin where there was no legal justification or probable cause to arrest, imprison, or prosecute her because, even under the State's version of the facts, her actions did not amount to a crime, and where the juror intimidation statute was unconstitutionally vague and otherwise violated Ms. Rovin's constitutional rights.

1. Did the trial court misconstrue the principles of common law immunity and the Maryland Tort Claims Act as applied to the uncontested facts before it?

2. Did the trial court err or abuse its discretion in denying appellant's requested discovery and in granting summary judgment?

Finding the need for discovery to be inextricably intertwined with resolution of the question of appellees' immunity, we will vacate the summary judgment and remand for further proceedings consistent with this opinion, including the opportunity to afford the parties reasonable discovery.

DISCUSSION

Standard of Review

We review a court's denial of discovery under the abuse of discretion standard and "'will only conclude that the trial court abused its discretion 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.'" *Bacon v. Arey*, 203 Md. App. 606, 671 (2012) (quoting *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 28 (2005)). "Although

5. Whether the circuit court erred by applying the wrong legal standards to Ms. Rovin's defamation and false light claims, including by applying the constitutional malice standard, which is reserved for public figures and does not apply to Ms. Rovin, who is a private citizen, as well as inapplicable privileges.

6. Whether the circuit court erred in granting summary judgment against Ms. Rovin without allowing Ms. Rovin the opportunity to conduct any discovery.

the abuse of discretion standard is highly deferential, a trial judge's discretion is not boundless." *Butler v. S & S P'ship*, 435 Md. 635, 650 (2013).

We review a court's grant of summary judgment *de novo* and "[w]here there is no dispute of material fact, this Court's focus is on whether the trial court's grant of the motion was legally correct." *Powell v. Breslin*, 195 Md. App. 340, 345–46 (2010) (citing *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152–53 (2008)). In our review, "we construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party[.]" *Id*. at 346 (citations omitted).

Summary judgment can survive only when "there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Rule 2-501(f). "'It is a settled principle of Maryland appellate procedure that ordinarily an appellate court will reverse a grant of summary judgment only upon the grounds relied upon by the trial court.'" *Tollenger v. State*, 199 Md. App. 586, 609 (2011) (quoting *Bishop v. State Farm Mut. Auto Ins.*, 360 Md. 225, 236 (2000)). The motions court concluded that there was no dispute of material fact and granted summary judgment on the basis of immunity. We believe that the court's immunity determination was premature and ought not have been reached without first affording the parties reasonable opportunity to conduct relevant discovery.

Protective Order and Discovery

Suit was filed on July 26, 2017. Appellees were timely served, and initially moved to dismiss the complaint or, in the alternative, for summary judgment. Appellant propounded an initial request for production of documents relating to her arrest, detention

and prosecution, and filed a notice of discovery on November 22, 2017, which was responded to by the State-appellees six days later in a motion for protective order.

In its motion, the State-appellees requested that they be protected from answering discovery until the resolution of their pending motion for summary judgment, and contended that they "should not be required to undertake the burden of compiling, reviewing and producing documents until it is clear that any of them will remain in the case, or that the case will move forward at all." Further, they claimed that appellant would not be prejudiced by any delay in receiving the requested documents, because "none of which has any bearing on the issues presented in [their] dispositive [summary judgment] motion or [appellant's] Opposition."

Appellant disputed those assertions, averring that their pending motion for summary judgment was "purportedly supported by cherry-picked documents" from their files on her. Further, she contends that she "has an undisputable right to discover the information in the possession of the State regarding her arrest, imprisonment, and prosecution, including the full extent and context of the State's documentation and information[,] … especially … given the highly subjective and disputed factual positions presented by the State in its motion …."

At the pretrial motions hearing on all pending motions, including appellees' motions to dismiss or alternatively for summary judgment and the request for protective order, appellant again pressed her request and need for discovery, asking the court to withhold its ruling on the motion pending completion of discovery.

Following the hearing, the court granted the protective order on January 29, 2018. At that point, no formal answer to the complaint had been filed by any appellees, and no scheduling order had been entered by the court.

On February 10, 2018, the court filed its written Opinion and Order, granting summary judgment, and, specifically with respect to appellant's discovery request, wrote:[10]

> At this time it should be noted that Plaintiff may feel slighted by this decision (the grant of summary judgment). At the motions hearing, Plaintiff averred that the instant motion for summary judgment should be denied as the discovery process has not yet been conducted. Therefore, she argued that this Court should stay its hand so that the process of discovery can be fulfilled. Implicit in this argument is the notion that discovery would operate to rouse any facts from hiding that have yet to be revealed. These facts would then act to vindicate Plaintiff's case by rekindling any substantive embers that were in danger of being extinguished by a determination of summary judgment. However, were the Court to deny the motion upon this basis, it would amount to the sanctioning of a fishing expedition, which is anathema to the edicts of justice.
>
> The Court's thinking in this regard is bolstered by the Court of Special Appeals in *Honeycutt v. Honeycutt*, 150 Md. App. 604 (2003). There, the Court of Special Appeals held that "while … [a trial] court has discretion to deny a motion for summary judgment so that a more complete factual record can be developed, it is not reversible error if the court chooses not to do so." … Moreover, in order to justify Plaintiff's expedition, it is well settled that a plaintiff must first set forth facts controverting those proffered by the defendant. *Id*. [at 621]. Here, no such arguments have been made by Plaintiff – that there exists a cornucopia of fruitful facts that would operate to win Plaintiff the day, and which are slumbering just out of sight. On the contrary, the facts of the instant case are not in dispute and comprise the entirety of the record in existence. As such, Plaintiff's assertion that discovery is needed amounts to a bald allegation, and it will find no respite here. Consequently, the Court will not stay its ruling, and the entry of summary judgment is appropriate.

[10] We quote from the court's 28-page Opinion and Order only excerpts that we consider to have bearing on the discovery question.

Discovery is provided for by Maryland Rules 2-401, *et seq*., which has been held to be comprehensive and has been consistently so interpreted by Maryland appellate courts. *See, e.g.*, *Baltimore Transit Co. v. Mezzanotti*, 227 Md. 8, 13 (1961) (explaining that, with respect to the discovery rules, "it is clear they are broad and comprehensive in scope, and were deliberately designed so to be"). *Accord Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc*., 195 Md. App. 583, 595 (2010) (noting that the discovery rules "'were deliberately designed to be broad and comprehensive in scope'" (quoting *Ehrlich v. Grove*, 396 Md. 550, 560, 914 A.2d 783 (2007))).

As we have explained:

> The fundamental objective of discovery is to advance "the sound and expeditious administration of justice" by "eliminat[ing], as far as possible, the necessity of any party to litigation going to trial in a confused or muddled state of mind, concerning the facts that gave rise to the litigation." *Mezzanotti*, 227 Md. at 13. Because the "sound and expeditious administration of justice" is best served when all parties are aware of all relevant and non-privileged facts, the discovery rules are intended to be liberally construed. *North River Ins. Co. v. Mayor and City Council of Baltimore*, 343 Md. 34, 83–84 (1996) ([Bell, J. dissenting]).

Gallagher Evelius & Jones, LLP, 195 Md. App. at 595–96. Administration of the discovery rules, and discovery disputes, are left to the discretion of the trial court. *Grove*, 396 Md. at 560 (quoting *E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc*., 351 Md. 396, 405 (1998)). In the exercise of that discretion, trial courts have the authority to limit discovery to prevent abuse. *Drolsum v. Horne*, 114 Md. App. 704, 712–13 (1997) (citing *Blades v. Woods*, 107 Md. App. 178, 184 (1995)). Moreover, it is generally said that dismissal of a complaint before any discovery has taken place "'is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford

relief to the plaintiff.'" *O'Brien & Gere Engineers, Inc. v. City of Salisbury*, 447 Md. 394, 403–04 (2016) (quoting *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 555 (1999)).

This is especially true within the bounds of a Rule 2-322 preliminary motion to dismiss when the court considers matters outside of the pleading, thereby converting a motion to dismiss into a motion for summary judgment. *See* Rule 2-322(c) (explaining that when "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment …, and all parties *shall be given reasonable opportunity to present all material made pertinent to such a motion* by Rule 2-501" (emphasis added)). Indeed, "Rule 2-322[(c)] imposes a mandatory duty on the circuit court judge, not the parties, to give the litigants a reasonable opportunity to present all materials, including the right to discovery." *Henry v. Gateway, Inc*., 187 Md. App. 647, 660–61 (2009). This is "because a non-moving party may be prejudiced if a trial court … does not give the non-moving party a reasonable opportunity to present material that may be pertinent to the court's decision, as required by Maryland Rule 2-501." *Worsham v. Ehrlich*, 181 Md. App. 711, 722–23 (2008) (citing *Green v. H & R Block, Inc*., 355 Md. 488, 502 (1999)).

Appellant's trial counsel, in opposing the State-appellees' motion for protective order during the motions hearing, said to the motions court, "it's a little unfair to file a summary judgment motion a week after being served with the complaint and then take the position that[] … you're not entitled to any discovery …." In her opening brief before this Court, appellant asserts that the trial court "simply accepted the State's view of its own exhibits." That is not an unreasonable conclusion. Appellant further argues:

> Discovery would have given Ms. Rovin the opportunity to obtain the State's documentation, bolster her claims, and gain proper context to refute the State's actions and assertions. *It would have allowed her to conduct discovery as to the malice element of her malicious prosecution claim*. It would have shed additional light on the statements and events leading up to her arrest that Ms. Rovin, as the arrestee, cannot know absent the conduct of discovery. It would also have allowed her to explore additional, related issues, such as whether the warrant application contains any misrepresentations or misstatements of fact, and why the sheriff's office did not call or otherwise contact Ms. Rovin prior to arresting and imprisoning her. Ms. Rovin's demonstration that she was arrested without probable cause is sufficient to at least allow her claims to proceed through the discovery phase of the litigation. This is not a case that can properly be disposed of in its entirety without any discovery. Likewise, the news article quoting Sheriff Lewis' defamatory statement should have provided enough legitimacy to Ms. Rovin's allegations so as to warrant additional discovery on the defamation and false light claims.
>
> Further, although the circuit court concluded that Ms. Rovin did not dispute what [Robert] Rovin alleged was said to him when Ms. Rovin visited him after her daughter's trial, the court's conclusion is incorrect and fails to consider Ms. Rovin's affidavit, which was attached to her opposition [to the motion for summary judgment]. In her affidavit, she testified in response to [Robert] Rovin's allegations, "I did not, at any point in time during my conversation with [Robert] Rovin, either threaten to cause any harm or come into any physical contact with him." Ms. Rovin also testified that she had reviewed the statement given by [Robert] Rovin to Deputy Cook on June 17, 2015, including his description of what she allegedly said to [Robert] Rovin, and testified that what [Robert] Rovin alleged "is not true" and that she "did not threaten to harm [Robert] Rovin or tell him that someone else would harm him."[11]

(Emphasis added).

We conclude that the trial court's denial of discovery at such an early stage in the litigation was not what is anticipated by the discovery rules.

[11] Appellees do not respond to appellant's discovery challenge on appeal.

Summary Judgment

In considering the propriety of a grant of summary judgment, we look to the "'facts and inferences that can [reasonably] be drawn from those facts … in the light most favorable to the non-moving party.'" *Sutton-Witherspoon v. S.A.F.E. Mgmt., Inc.*, 240 Md. App. 214, 232 (2019) (quoting *Deboy v. City of Crisfield*, 167 Md. App. 548, 554 (2006)). "'If the facts are subject to more than one inference, those inferences should be submitted to the trier of fact.'" *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 635 (2009) (quoting *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294 (2007)). Finally, "[w]e review a circuit court's decision to grant summary judgment without deference, by independently examining the record to determine whether the parties generated a genuine dispute of material fact and, if not, whether the moving party was entitled to judgment as a matter of law." *Colbert v. Mayor and City Council of Baltimore*, 235 Md. App. 581, 587 (2018) (citing *Rowhouses, Inc. v. Smith*, 446 Md. 611, 630 (2016)). In doing so, we "'construe any reasonable inferences that may be drawn from the facts against the moving party.'" *Kennedy Krieger Inst., Inc. v. Partlow*, 460 Md. 607, 633 (2018) (quoting *Chateau Foghorn LP v. Hosford*, 455 Md. 462, 482 (2017)).

Two significant concepts underly appellant's allegations in support of her claims as set out in her complaint. First, she avers that there are disputed facts as to what was said or implied during her visit with Robert Rovin following the trial of her daughter. Robert Rovin, in providing information in support of the statement of charges of assault, asserted assaultive conduct on her part. Appellant, by affidavit filed in support of her opposition to appellees' motion for summary judgment, contravened his version of events and what was

said, and by whom. While "the mere submission of an affidavit, or other evidence in opposition to a motion for summary judgment, does not ensure that a triable issue of fact will be generated[,]" *Honeycutt*, 150 Md. App. at 620, it is also true that "[t]he summary judgment process is not properly an opportunity for the trial court to give credence to certain facts and refuse to credit others." *Lee v. Cline*, 384 Md. 245, 268 (2004). *Accord Hines v. French*, 157 Md. App. 536, 564 (2004) (explaining that "[s]ummary judgment is not a substitute for trial because it does not provide the proper opportunity for the trial court to give credence to certain facts and refuse to credit others" (citing *Okwa v. Harper*, 360 Md. 161, 182 (2000))).

The court determined that, during the motions hearing, appellant's trial counsel "admitted the basic facts of the case, declining to dispute even the more unflattering happenings …." The transcript of the motions hearing is void of any concession by appellant's counsel as to what, if any, threats she made to Robert Rovin during the encounter. At no point in its lengthy discussion does the court acknowledge appellant's affidavit that was filed with her opposition to the State-appellees' dispositive motion, wherein she denies making any threat to kill Robert Rovin and stated that she "did not threaten to harm Mr. Rovin or tell him that someone else would harm him." The only sworn testimonial evidence offered that would contradict appellant's sworn affidavit was the peace order transcript, wherein Robert Rovin conceded that she did not threaten to personally harm him; rather, that she had "threatened to have somebody come in from out of town … to cause me bodily harm[,]" which he later qualified, "to take care of me."

Further, he informed the presiding judge that he was seeking a peace order because the State's Attorney had advised him to do so.

The application for the statement of charges does not state what Robert Rovin said to Deputy Cook; rather, it describes Deputy Cook's interpretation and characterization of what Robert Rovin told him and does not note any contact with appellant and the deputy or any investigation into the encounter beyond the representations of Robert Rovin. The application for statement of charges states that, the words "take care of him," were felt by Robert Rovin "as an indirect death threat." During the peace order hearing, however, Robert Rovin did not express to the court a perceived death threat, only a threat of "bodily harm." There is no context provided for the alleged threat made by appellant to Robert Rovin and variations of how he interpreted the alleged threat. Further, the application for statement of charges states that Deputy Cook was advised by a representative of the State's Attorney's office that the incident should be charged as a case of "witness/jury intimidation." Based on those inconsistencies, there appears to be a dispute between a material fact as to whether the circumstances of the encounter between appellant and Robert Rovin justified pursuing criminal charges or whether there existed an ulterior or otherwise inappropriate motive.

Second, appellant's claims, and appellees' defenses, are predicated, in part, on claims of malice or gross negligence, the presence or absence of which could ultimately determine liability in this case, the establishment—or non-establishment—of which would be a matter of proof. The motions court, in our view, assumed the lack of malice or gross negligence based only on appellees' motions and without the benefit of the fruits of

reasonable discovery. To be sure, "[s]ummary judgment is generally inappropriate when matters such as knowledge, intent, and motive are at issue." *Okwa*, 360 Md. at 178. Indeed, "intent and motive are critical to the question of malice." *Lee*, 384 Md. at 269.

Thus, depending on the interpretation or inference that might be drawn by a trier of fact of the interaction between Robert Rovin and appellant, the criminal charges of juror intimidation and second-degree assault may, or may not, have been justified. Moreover, without the benefit of discovery, no assumption of the presence or absence of malice or gross negligence by any one or more of the appellees can reasonably be drawn.

We believe that those aspects of the allegations are sufficiently in doubt to generate a dispute of material fact, the existence of which precludes summary judgment at this stage of the proceedings. Therefore, we shall vacate the circuit court's grant of summary judgment and its protective order. Further, we shall remand this matter to the circuit for further proceedings, including appropriate discovery.

SUMMARY JUDGMENT VACATED; CASE REMANDED TO THE CIRCUIT COURT FOR WICOMICO COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION, INCLUDING DISCOVERY. COSTS ASSESSED TO APPELLEES.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0233s18cn.pdf