UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0346

September Term, 2014

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MARGARET U. OKOROJI-SCHAEFFER

v.

ALEATHIA HILL, ET AL.

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Eyler, Deborah S.,
Hotten,
Nazarian,

JJ.

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Opinion by Hotten, J.

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Filed: July 31, 2015

Appellant brought suit against her children's teacher, the school principal and the Prince George's County Board of Education ("the Board"), alleging negligence following an incident during which her son suffered an allergic reaction during lunch. Appellees moved to dismiss and the Circuit Court for Prince George's County granted the motion after appellant failed to file an opposition or appear at the hearing date. Appellant filed a motion to reconsider which was also denied. Appellant presents two questions on appeal:

> 1) Whether the circuit court erred in granting the Board's motion to dismiss.
>
> 2) Whether the circuit court erred in denying appellant's motion to reopen case.

For the reasons that follow, we shall affirm the judgment of the circuit court.

## FACTUAL BACKGROUND

Appellant, Margaret Okoroji-Schaeffer, is the mother of twin boys, Isaiah and Joshua, who were enrolled in the fifth grade at Woodmore Elementary School during the 2012-2013 school year. Appellant alleges that both boys were subject to bullying by other students throughout the school year. She made several complaints to Isaiah's teacher, appellee, Aleathia Hill ("Ms. Hill"), and the school's principal, appellee, Jill Walker ("Ms. Walker"), and contacted the Board on multiple occasions claiming that Ms. Hill and Ms. Walker declined to properly address her concerns. Both boys suffered from various food allergies including a peanut allergy. The school was made aware of their allergies and made a number of accommodations, including seating them at a "No Peanut" table during lunch. The incident which led to the instant lawsuit involved Isaiah. On October 10, 2012, Isaiah came into contact with peanuts and experienced an allergic reaction. The parties however, have different versions of how this occurred. Appellant contends that one of the

children who had previously bullied Isaiah ate a peanut butter sandwich at another table, then came over to the "No Peanut" table and intentionally blew his breath into Isaiah's face. Ms. Hill disputes this version and indicated that at the end of lunch, Isaiah approached her and related that he smelled peanut butter. Regardless, both parties agree that Isaiah was then escorted by Ms. Hill to the school nurse's office where he was given his epi pen injection and subsequently transported to the hospital via ambulance for treatment. Appellant was called and met Isaiah and Ms. Hill at the hospital.

Following this incident, appellant requested and was granted a transfer of the twins to a different elementary school. On April 11, 2013, she filed a *pro se* lawsuit in the District Court against Ms. Hill and Ms. Walker alleging negligence. She later amended the complaint to include the Board as a defendant. Her lawsuit asserted that Isaiah had been assaulted and bullied, that Ms. Hill breached her duty to supervise, and that Ms. Walker "covered up" Ms. Hill's negligence. Appellant maintains that as a result of the incident on October 11, 2012, Isaiah developed anxiety and fears he would have an allergic reaction at school and die.

Appellees answered the complaint and demanded a jury trial. Accordingly, the case was transferred to the circuit court. In September 2013, a pre-trial conference was scheduled for February 6, 2014. On October 29, 2013, appellees filed a Motion to Dismiss, or in the Alternative, for Summary Judgement [hereinafter "Motion to Dismiss"]. Appellant did not file an opposition. A motions hearing was scheduled for February 14, 2014. Appellees filed a pre-trial statement but appellant did not, nor did she attend the pre-

trial conference on February 6. On February 14, 2014, the circuit court opened on a two-hour delay as a result of inclement weather. When the court opened after 11:00 am, the motions hearing was held. Neither party appeared and consequently, the court dismissed appellant's lawsuit, predicated on appellant's failure to appear for either the pre-trial conference or the motions hearing. The dismissal was docketed on February 19, 2014.

On February 25, 2014, appellant filed an opposition to appellee's motion to dismiss and was advised that her case had been dismissed. The next day, on February 26, 2014 she filed a motion to reopen case. In her motion, she averred that she arrived at the courthouse on February 14, 2014 at 9:00am to find that it was closed due to snow. She contended that she called the clerk's office, left a message, and, presuming that the court was closed for the entire day, did not return to the courthouse that day. Appellees filed an opposition to her motion arguing that the court properly exercised its power to rule on the motion to dismiss and that pursuant to Maryland Rule 2-535, appellant had no grounds to seek reconsideration. On March 28, 2014, the court denied appellant's motion to reopen. Appellant filed a notice of appeal on April 29, 2014 and appellees filed a motion to strike the appeal alleging that it was filed untimely. The circuit court held a hearing on the matter on July 11, 2014 and on July 21, 2014, denied appellees' motion.

Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues on appeal.

## STANDARD OF REVIEW

We review a trials court's grant of a motion to dismiss under a legally correct standard. *See Britton v. Meier*, 148 Md. App. 419, 425 (2002). This Court reviews an appeal of a denial of a Maryland Rule 2-535(b) motion under the abuse of discretion standard. *See Thacker v. Hale*, 146 Md. App. 203, 219 (2002); *Gruss v. Gruss*, 123 Md. App. 311, 320 (1998).

A court has abused its discretion:

> [W]here no reasonable person would take the view adopted by the [trial] court, or when the court acts "without reference to any guiding rules or principles." It has also been said to exist when the ruling under consideration "appears to have been made on untenable grounds," when the ruling is "clearly against the logic and effect of facts and inferences before the court," when the ruling is "clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result," when the ruling is "violative of fact and logic," or when it constitutes an "untenable judicial act that defies reason and works an injustice." In particular, fraud, which appellant alleges, must be proven by clear and convincing evidence.

*Bland v. Hammond*, 177 Md. App. 340, 346-47 (2007) (quoting *Das v. Das*, 133 Md. App. 1, 15-17 (2000)) (internal citations omitted).

## DISCUSSION

*1. Dismissal for Failure to Appear*

Appellant argues that the circuit court erred in dismissing her case because she acted reasonably in her attempts to appear in court on February 14, 2014. Appellees respond that appellant failed to file a response to their motion to dismiss and accordingly, the court was within its power to rule on the motion in her absence. The majority of appellant's argument relies heavily on the trial court's alleged failure to properly advertise the weather delay.

She maintains that she arrived at court at the scheduled time on the day of the hearing, to find the courthouse closed with no information regarding a delayed opening time. Additionally, she asserts that in an effort to ensure she was present, she called the clerk's office and left a message including her phone number, but her call was not returned. Before the circuit court, appellant also disputed appellees' argument that the weather delay was advertised on local news and accessible on the circuit court's website. We shall not engage in a discussion regarding whether appellant's efforts were sufficient or reasonable because we conclude that regardless, the circuit court did not err in ruling on the motion to dismiss in her absence. We explain.

Maryland Rule 2-311 governs motions filed before a circuit court, and provides:

> (b) Response. Except as otherwise provided in this section, a party against whom a motion is directed shall file any response within 15 days after being served with the motion, or within the time allowed for a party's original pleading pursuant to Rule 2-321 (a), whichever is later. Unless the court orders otherwise, no response need be filed to a motion filed pursuant to Rule 1-204, 2-532, 2-533, or 2-534. If a party fails to file a response required by this section, the court may proceed to rule on the motion.

The fifteen day time limit to respond enumerated in Md. Rule 2-311 applies to motions to dismiss. *See HI Caliber Auto & Towing, Inc. v. Rockwood Cas. Ins. Co.*, 149 Md. App. 504, 506 (2003). Since Md. Rule 2-311 governs, pursuant to the last sentence of the rule, the circuit court could rule on the motion to dismiss even though a party failed to file a response. Accordingly, we hold that the circuit court did not err in ruling on appellee's motion to dismiss in her absence.

We now turn to whether the court was legally correct in its reasoning that dismissal was permissible based on appellant's failure to appear. When appellant's case was called on the date of the hearing, neither party was present. As a result, the following transpired:

> THE COURT: All right. This case is in for a Motion's Hearing on the Defendant School Board's Motion to Dismiss. The Plaintiff having failed to appear for a Pretrial Conference, having failed to appear this morning, this case is dismissed.

This Court addressed a similar issue in *Tavakoli-Nouri v. Mitchell*, 104 Md. App. 704 (1995).[1] There, the plaintiff, a resident of Iran, was injured in an automobile accident with the defendant in Maryland. *Id*. at 705-06. He sustained serious injuries and was hospitalized in the United States for five months. During this time, he obtained counsel in Maryland to pursue his lawsuit. Upon his release from the hospital, he returned to his home in Iran for further treatment. Following discovery, in October 1994, the trial court scheduled a pre-trial settlement conference for June 1994. *Id*. at 706. In between the scheduling of the settlement conference and the date of the hearing, the plaintiffs' counsel withdrew, apparently without the plaintiff's knowledge. Upon the counsel's notice of withdrawal, the court proceeded to mail all notices to the address they had on file for the plaintiff – the hospital in the United States where he had been receiving treatment immediately following the accident. *Id*. However, since appellant had returned to his home country of Iran, he did not receive any correspondence from the court. Three days before the settlement conference, counsel for the defendant contacted the plaintiff in Iran and

[1] *See e.g. Warehime v. Dell*, 124 Md. App. 31, 48 (1998) (affirmed a trial court's dismissal when a party failed to respond to discovery requests).

informed him for the first time that there was a settlement conference scheduled in three days. *Id*. at 708. Immediately after speaking with counsel, the plaintiff contacted the trial court and, upon advice from the court, faxed a request for a continuance, indicating that he was in Iran, hospitalized for treatment of a serious condition, and requested a delay so that he could have time to return to the United States. *Id*. On the date of the hearing, the court denied his request. *Id*. On appeal, this Court considered that appellant's failure to respond to interrogatories or appear the settlement conference was "not wholly without justification." *Id*. We noted that based on the record before the circuit court, the plaintiff called the court from a hospital bed in Iran which demonstrated his intent to continue pursuing his case. *Id*. at 709. Therefore, we reversed the trial court's dismissal and remanded back so that the plaintiff could pursue his case. *Id*.

Later in *Zdravkovich v. Siegert*, 151 Md. App. 295 (2003), this Court again addressed a trial court's dismissal of an action for failure to appear. The plaintiff had filed a breach of contract action against the defendants. *Id*. at 298. In the court's scheduling order it indicated: "[t]his is a firm trial date. No continuances will be granted except as justice requires in accordance with Md. Rule. 2-508." *Id*. at 299. Five days before trial, the plaintiff filed a motion for continuance citing illness and attaching a letter from his doctor. *Id*. at 300. The court denied this motion. *Id*. Then, on the date of trial, the plaintiff filed a motion to reconsider the court's denial of his request for a postponement. At the hearing on his motion, the plaintiff was not present and the court denied the motion for reconsideration. When the court called case for the trial on the merits, it observed that only

one defendant was present. That defendant moved to dismiss the case against him. *Id*. at 302. The court granted this motion and additionally dismissed the plaintiff's case against all defendants based on the plaintiff's failure to appear. *Id*.

The plaintiff appealed, challenging in part the court's dismissal predicated on his absence at the hearing. *Id.* We began by noting that: "[w]hile the Maryland Rules contain no rule dealing specifically with the court's inherent power to dismiss a case *sua sponte* when the plaintiff fails to appear on the day of trial, the Court of Appeals has acknowledged that a trial court may, without abusing its discretion, grant judgment in favor of a defendant when the plaintiff fails to appear for trial." *Id.* at 306 (footnote omitted). We also explained that on appellate review of a trial court's decision to dismiss a case, we must defer to the trial court and not disturb the court's ruling expect for a clear abuse of discretion because a court has an obligation to manage the docket and may dismiss an action if it finds it necessary to do so. *Id*. at 307-08. We then distinguished the case from *Tavakoli-Nouri*, *supra*, noting that the trial had been scheduled for six months, that appellant knew that the court had denied his request for a postponement and that he was expected to appear for trial. *Id*. at 308. Considering these facts we affirmed the court's dismissal. *Id*.

In the case at bar, appellant filed her complaint on July 29, 2013 and on September 11, 2013, the court scheduled a pre-trial conference for February 6, 2014. Notwithstanding her five months' notice of the pre-trial conference, appellant neither appeared nor filed a pre-trial statement. Additionally, appellees filed a motion to dismiss on January 9, 2014. Appellant did not file a response to this motion. As we noted in

*Zdravkovich*, if necessary, a trial court may *sua sponte* dismiss an action. Here, although appellees had filed a motion to dismiss, the court dismissed the action based on appellant's failure to attend the pre-trial conference and the motions hearing. Unlike the circumstances surrounding the dismissal in *Tavakoli-Nouri*, the facts of this case are not so compelling as to warrant an error on the part of the circuit court. Unlike the plaintiff in *Tavakoli-Nouri*, appellant was present in and a resident of Maryland at all times during the litigation. She was not injured, hospitalized nor had she suffered any other disability that prevented her from appearing before the court. Furthermore, she had previously corresponded with the court regarding discovery, yet notwithstanding the above, failed to file a pre-trial statement, attend the pre-trial hearing, respond to the motion to dismiss, or attend the motions hearing. Absent more compelling circumstances, we decline to assign error to the trial court's dismissal.

*2. Motion for Reconsideration*

The next issue appellant presents before this Court is whether the court erred in denying her motion to reconsider the court's dismissal. Preliminarily, we note that the motion was titled a motion to reopen case, but was in substance a Maryland Rule 2-535 motion to revise. Maryland Rule 2-535 provides:

> (a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict 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.

> (b) Fraud, Mistake, Irregularity. On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.
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> (c) Newly-Discovered Evidence. On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 2-533.
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> (d) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record may be corrected by the court at any time on its own initiative, or on motion of any party after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed by the appellate court, and thereafter with leave of the appellate court.

Appellant's motion sought that the court reopen her case based on the aforementioned circumstances regarding the weather delay. Appellant's motion also indicates her mistaken belief that there was a separate hearing held after the February 14, 2014 motions hearing at which her case was dismissed. The dismissal was not docketed until February 19th. Therefore, to the extent appellant was advancing an argument of clerical error or fraud, we find no error. Pursuant to the requirements of Md. Rule 2-535, appellant did not proffer any rationale that would demand the court's revision of its ruling. Accordingly, we hold that the court did not abuse its discretion in denying her motion.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. COSTS TO BE PAID BY APPELLANT.**