

Circuit Court for Baltimore County
Case No. C-03-CV-23-002799

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 351

September Term, 2024

MICHELLE R. WEDDERBURN

v.

BOARD OF EDUCATION OF BALTIMORE
COUNTY

Wells, C.J.,
Nazarian,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: September 30, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

After the Circuit Court for Baltimore County dismissed her second amended complaint against the Baltimore County Board of Education (the “Board”) for breach of contract, Michelle R. Wedderburn filed post-judgment motions asking the court to reconsider its decision and to permit her to withdraw her second amended complaint. Because neither of the questions she seeks to raise on appeal are before us properly, we affirm the judgment.

I. BACKGROUND

A. Factual Background

On October 9, 2015, Ms. Wedderburn served as an Assistant Principal at New Town High School in Baltimore County and was on hall duty toward the end of the school day. An altercation broke out, and when she tried to intervene and stop it, a student body-slammed her to the ground, causing her to suffer a concussion and aggravating earlier injuries to her back and knee. She also suffered pain in her lower back and left arm and developed Post-Traumatic Stress Disorder. The following month, Ms. Wedderburn filed a workers’ compensation claim with the Maryland Workers’ Compensation Commission (the “Commission”). The Commission found that she was entitled to workers’ compensation for her injuries. Ms. Wedderburn appealed from the Commission’s determination to the Circuit Court for Baltimore County, and the court remanded. The matter went back up to the circuit court sometime in 2018, then lay dormant until April 2021.

Meanwhile, in December 2020, Ms. Wedderburn developed rheumatoid arthritis and sought sick leave from the United Sick Leave Bank (“USLB”), a program available to

her as a Baltimore County Public Schools (“BCPS”) employee. The Board rejected her request, citing a provision in the operative collective bargaining agreement (“CBA”) that prohibited employees from drawing sick leave from the USLB while they had an active workers’ compensation claim.

The Council of Administrative and Supervisory Employees (“CASE” or the “Union”) challenged the leave bank decision on Ms. Wedderburn’s behalf. On February 1, 2022, Ms. Wedderburn was granted a disability retirement benefit that negated her entitlement to the leave bank (and is available only to active employees). The Union, on her behalf, advanced her position that she was entitled to sick leave because her workers’ compensation claim was inactive. After two denials, the Union sought arbitration, and the matter came before an arbitrator on September 29, 2022.

The arbitrator issued a decision on November 9, 2022. He found that Ms. Wedderburn’s workers’ compensation claim was not active at the time that she applied for sick leave. He reasoned that the Board had ignored her claim history and jumped to the conclusion that because Ms. Wedderburn’s claim was open, it necessarily was active. The Board should have known, he found, that the Commission had stopped processing her claims. The Union also sought payments from January 2021 to February 2022, but the arbitrator denied those as not supported by the arbitration record or otherwise appropriate. The arbitrator ruled that Ms. Wedderburn was entitled to draw from the leave bank from December 2020 to April 12, 2021, the date when the Commission finally held a hearing on Ms. Wedderburn’s second workers’ compensation appeal after approximately three years

of inaction.

On December 9, 2022, Valerie Holden, general counsel to the Board and Board representative during the arbitration, mailed a letter to William Burke, CASE’s executive director, that calculated Ms. Wedderburn’s arbitration award as \$33,855.84—seventy-two days of unpaid sick leave from December 2020 to April 12, 2021—and stated the Board’s intention to mail a check in that amount to Ms. Wedderburn on December 16, 2022. Then, the Board mailed Mr. Burke a check and a letter stating that because the Board and CASE had agreed on the award, the \$33,855.84 “payment conclude[d] the arbitration between the parties.”

B. Procedural Background

1. The first motion to dismiss

On July 7, 2023, Ms. Wedderburn filed a four-count complaint against the Board in the circuit court. The first two counts alleged violations of the Maryland Wage Payment and Collection Law and the Maryland Labor and Employment Law in which Ms. Wedderburn alleged that the Board had failed to pay her wages and vacation pay. Count Three asserted a breach of contract arising from the same failure to pay her wages and vacation pay. In Count Four, titled “Arbitration Enforcement Under [Maryland Uniform Arbitration Act],” Ms. Wedderburn alleged that the Board failed to satisfy the November 9, 2022 arbitration award and that the Board had not acted in good faith to satisfy the Maryland Uniform Arbitration Act (“MUAA”) and the agreement to arbitrate. She asked the court to award her treble damages and vacation pay and compensatory and punitive damages for the Board’s statutory violations and breach of contract; to order the

enforcement of the arbitration award; to award her fees and costs for the litigation; and to award any other relief the court found proper.

The Board moved to dismiss the complaint or, alternatively, for summary judgment. The circuit court held a hearing. At the hearing, Ms. Wedderburn agreed to dismiss Counts One and Two and asked for leave to amend her complaint. The court responded that it would reserve ruling on the matter and issue a written decision. In an order dated December 7, 2023, the court dismissed Counts One and Two with prejudice, stating that it did so with Ms. Wedderburn's consent, and that it would reserve ruling on Counts Three and Four.

Eight days later, the court issued an order dismissing Counts Three and Four. As to Count Three, breach of contract, the court found Ms. Wedderburn's allegations too vague and ambiguous to identify whether her employment contract or the CBA was at issue. The court granted the Board's motion to dismiss but afforded Ms. Wedderburn leave to amend her complaint within fifteen days; if she didn't amend her complaint within that time, it would dismiss the pleading with prejudice. The court dismissed Count Four without leave to amend on the ground that it lacked jurisdiction to confirm, vacate, or modify the arbitration award because that request was untimely.

2. *The second motion to dismiss*

Ms. Wedderburn filed an amended complaint on January 2, 2024, then a second amended complaint the next day—Count Three, breach of contract, was the only count that remained. She alleged that the Board breached the CASE Master Agreement by refusing to pay her from October 1, 2021 to February 28, 2022 and for her vacation pay. She asserted

the Board also breached the Master Agreement when it allowed Assata Peterson, the manager of the Office of Employee Absence and Risk Management at the Board, and others to deny Ms. Wedderburn's request for leave from the leave bank because of her active workers' compensation claim. She concluded that the Board had retaliated against her for filing a workers' compensation claim and did so intentionally for the purpose of punishing her. Ms. Wedderburn asked the court to award her unpaid wages from October 1, 2021 to February 28, 2022; accrued vacation pay with interest; compensatory and punitive damages for retaliation, pain and suffering, and mental anguish; fees and costs; and any other relief the court deemed just and proper.

The Board moved to dismiss or for summary judgment. The Board argued that the only remedies available to Ms. Wedderburn arose under the Master Agreement, that she had invoked those remedies through the Master Agreement's grievance procedure, and that she had been awarded \$33,855.84 after arbitration. The Board asserted that Ms. Wedderburn's second amended complaint did not allege that she was represented improperly during that procedure or that the Union acted unfairly, arbitrarily, or discriminatorily, claims that would have laid against the Union and not the Board in any event. The Board asserted that it satisfied the arbitration award and that the Board was entitled to judgment as a matter of law. In addition, the Board argued that it was entitled to sovereign immunity because Ms. Wedderburn had filed her claim outside the statutory period. And that, because the CASE Master Agreement was a contract between CASE and the Board, Ms. Wedderburn was not a party to that contract and could not sue for breach.

Finally, the Board contended that Ms. Wedderburn had exhausted all available remedies and that those remedies had resulted in a final, binding award in her favor.

Ms. Wedderburn opposed the Board's motion. She argued that contractual remedies were not her exclusive remedies for discrimination and unconscionability and that, although she participated in and received an award from the grievance process, the award had been procured by fraud on the Board's part. She argued that because she had exhausted her contractual remedies, she was now free to pursue her claims in circuit court. Additionally, she said, the grievance procedure did not shield the Board from civil litigation where the Union and Board agreed to discriminate against an employee, and the Master Agreement could not compromise her Title VII claim. She argued also that there are exceptions to the doctrine of exclusive remedy that applied to her case, such as repudiation under the Labor Management Relations Act ("LMRA"). In essence, she contended that because the Union and Board worked together to deny Ms. Wedderburn her contractual rights, they repudiated her contract and, therefore, she could bypass the grievance process because engaging in it would have been "an exercise in futility." Ms. Wedderburn asserted as well that the Board had waived its sovereign immunity, that she was allowed to bring her claim within the statutory period, and that she had done so. She added that she was the proper party to bring her claims because her employer had repudiated her contract and engaged in fraud and discrimination. She claimed that summary judgment was not appropriate because genuine issues of material fact existed and the arbitration clause was not enforceable because, she said, there was a genuine dispute over whether her workers'

compensation claim was still active. She argued that the arbitration was inappropriate because the Board engaged in fraud and, lastly, that the Board had retaliated against her when she returned to school from the attack.

In response, the Board argued that Ms. Wedderburn's dissatisfaction with the exclusive remedy under the Master Agreement did not confer jurisdiction on the circuit court. It added that Ms. Wedderburn's discrimination claims were not properly before the circuit court, as she had not alleged any Title VII claims in her complaint and had not exhausted, or alleged that she had exhausted, the administrative remedies required for a Title VII claim. The Board contended that the LMRA did not apply to the Board, and that sovereign immunity otherwise barred Ms. Wedderburn's claims. The Board argued that it was entitled to summary judgment because the question of whether her workers' compensation claim was still active had been the issue at arbitration. And, according to the Board, the record contradicted Ms. Wedderburn's arguments about unconscionability, and she did not otherwise allege sufficient facts to establish that the award she received was improper or that the Board had engaged in fraud.

The parties appeared at a hearing for the motion to dismiss or for summary judgment on March 8, 2024. During the hearing, Ms. Wedderburn argued in part that the Board's decision to treat her workers' compensation claim as active was fraudulent and that, had she known, she would not have participated in the arbitration. The court informed her that her argument seemed to respond to the arbitration count the court had dismissed in the first complaint, and that to the extent she was alleging fraud, the only count before the court

was breach of contract. Ms. Wedderburn then asked the court to permit her to amend her complaint and add a new count for fraud. The court informed her that it was inclined to grant the Board’s motion but that it would reserve ruling on the motion until it read two cases that the Board had cited in its motion and mentioned at the hearing.

On March 11, 2024, Ms. Wedderburn moved to withdraw her second amended complaint, reasoning that she had a pending claim with the Equal Employment Opportunity Commission (“EEOC”) and wanted to preserve her right to pursue her claims in federal court. Eleven days later, the court issued its memorandum opinion and order, granting summary judgment in the Board’s favor. The court reasoned that it was incorporating the Board’s arguments and treating the motion to dismiss as a motion for summary judgment. The court found that the only remedies available to Ms. Wedderburn for her claims arose from the Master Agreement, that she had already availed herself of these remedies through arbitration, and that she had participated in that hearing and was represented by counsel. As for the arbitration process, the court had already dismissed the claim stemming from Ms. Wedderburn’s first amended complaint. The court concluded that the Board was entitled to judgment as a matter of law because there was no genuine dispute of material fact over whether Ms. Wedderburn had exhausted her contractual remedies and because she could not bring a separate action for a breach of contract under the Master Agreement. Ms. Wedderburn filed a timely notice of appeal on April 19, 2024.

3. *Post-judgment motions*

On the same day she filed her notice of appeal, Ms. Wedderburn moved to reopen

or revise the court’s judgment. Citing Maryland Rule 2-535, she argued that the court should revise its judgment to permit her to pursue various discrimination claims. She included an affidavit stating that she “understands that she cannot pursue claims under the Breach of Contract claim, but seeks a dismissal without prejudice or other relief that would allow her to dispose of the Breach of Contract claim whilst still preserving her rights in the Notice.” Three days later, on April 22, 2024, she filed an amended notice of appeal. The following day, she filed a motion to vacate with the same contents as her motion to reopen or revise the court’s judgment.

The Board opposed her motion to reopen or revise the judgment. The Board argued that Ms. Wedderburn was not challenging the court’s decision to enter judgment as a matter of law and had not articulated any grounds for the court to exercise its revisory power. The Board stated that any claims Ms. Wedderburn had before the EEOC were unrelated and had no impact on the breach of contract action. Finally, the Board asserted that Ms. Wedderburn effectively had conceded that the court’s decision to dismiss her complaint was correct because she stated that she understood that she could not pursue a breach of contract claim.

The court issued an order denying Ms. Wedderburn’s motion to vacate judgment on May 14, 2024. The court concluded that Ms. Wedderburn’s motion failed to state a legal basis for revising the judgment. There was no notice of appeal from that decision.

II. DISCUSSION

We told the story of the dispute and litigation in detail because there is some

discrepancy between the issues Ms. Wedderburn raised previously and those she seeks to raise on appeal.¹ This disconnect matters because it drives what questions are and aren't before us. And as we'll discuss, Ms. Wedderburn's questions aren't before us, each for a different reason.

A. Ms. Wedderburn Never Alleged A Claim For Retaliation In The Circuit Court.

As in all appeals, we start by identifying the issues that are (and aren't) before us to decide. Ms. Wedderburn describes her first appellate issue as the denial of a retaliation claim. The Board responds that Ms. Wedderburn didn't argue retaliation in her complaints in the circuit court, so she cannot assert it here. The Board is right.

An appellate court generally “will not decide any other issue unless it plainly

¹ Ms. Wedderburn phrased her questions presented as:

1. Whether Appellant's claim of retaliation for filing a worker's compensation claim should not have been dismissed.
2. Whether it was error for the Circuit Court to fail to determine Appellant's motion for voluntary dismissal under Md. Rule 2-506 prior to granting summary judgment.

The Board phrased its questions presented as:

1. Was the decision of the Circuit Court to grant the Board's Motion to Dismiss Count IV and accept Wedderburn's consent to dismiss Counts I and II legally correct?
2. Was the decision of the Circuit Court to grant the Board's Motion for Summary Judgment as to Count III legally correct?
3. Did the Circuit Court properly exercise its discretion in denying Wedderburn's Post-Judgment Motions?

appears by the record to have been raised in or decided by the trial court.” Md. Rule 8-131(a). The operative complaint here was the second amended complaint. The only count listed in that complaint, Count Three, alleged a breach of contract. As we read that complaint and the rest of the record, Ms. Wedderburn alleged that the Board denied her access to the leave bank because she had a pending (and active) workers’ compensation claim. To be sure, she disputes that characterization and ascribes ill motives to the Board decision. But she never alleges retaliation—indeed, she deleted a single reference to retaliation from the first amended complaint in the second, which she filed voluntarily. And in any event, her allegations of actions and motive lead only to the contention that the Board breached the Master Agreement.

Even construing her allegations as liberally as possible, Ms. Wedderburn never alleged a retaliation claim. In the life of this case, this was Ms. Wedderburn’s third complaint. The first complaint had this same count styled as a breach of contract claim. In the order dismissing that complaint, the circuit court found this count too vague and ambiguous even to determine which contract Ms. Wedderburn was alleging to be breached. So she filed another complaint, this time identifying the allegedly breached agreement—alleging in paragraph 31, for example, that “the Board violated Article 14.4 of the CASE Master Agreement,” then in paragraph 34 that “the Board violated Article 9.3 of the CASE Master Agreement when they allowed Ms. Peterson to retaliate against Ms. Wedderburn when she intentionally interpreted the contract in a way [that] caused undue harm to a member.” But literally the next day, and without any prompting, she filed a

(second) amended complaint that, in the replacement to paragraph 34 of her first amended complaint, alleged only that the Board had allowed “Ms. Peterson and others to deny Ms. Wedderburn’s [leave bank] application for no reason” and deleted the former language that characterized that action as an act of retaliation. The pleadings may briefly have contained a passing characterization of retaliation, but Ms. Wedderburn herself deleted and superseded it before it could take effect.

The language in the complaints is consistent with the way the parties approached this breach of contract claim. The Board, in responding to Ms. Wedderburn’s pleadings, addressed Count Three as a breach of contract claim throughout, arguing that Ms. Wedderburn had exhausted the available contractual remedies and that she was not a party to the Master Agreement, not that there had been no retaliation on the Board’s part. Additionally, at the hearing for the motion to dismiss her second amended complaint, when Ms. Wedderburn alleged instances of fraud, the court informed her—and she agreed—that only the breach of contract claim was before the court:

THE COURT: And what I would say to you that a lot of your allegations to the extent they go to fraud, the only count before me is breach of contract count.

MS. WEDDERBURN: Right.

THE COURT: That’s the only count that’s in front of me is breach of contract. There is not fraud count in the amended complaint.

MS. WEDDERBURN: Right. . . .

Because the “only count” before the court was for breach of contract, there was no separate count for retaliation raised or decided by the circuit court. *See* Md. Rule 8-131(a). Perhaps

one could argue that a retaliatory motive underlaid the decisions allegedly comprising a breach, but that’s not the argument Ms. Wedderburn posits here. The claim she is seeking to assert on appeal was never raised or decided in the circuit court, and we cannot decide it in the first instance here.

B. Because We Lack Jurisdiction, We Cannot Reach The Merits Of Ms. Wedderburn’s Appeal.

From there, Ms. Wedderburn argues that the circuit court should have granted her request to dismiss the case voluntarily before entering summary judgment in the Board’s favor. She asserts that the court abused its discretion by not considering the appropriate factors for voluntary dismissal when she raised that possibility to the court “on the post-judgment motion.” The Board asserts that the circuit court denied Ms. Wedderburn’s post-judgment motions properly.

Before we can address this issue, we must step back and assess whether we even have jurisdiction to do so. *Lopez-Sanchez v. State*, 155 Md. App. 580, 606 (2004), *aff’d*, 388 Md. 214 (2005). Generally, “if a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, 2-534, or 11-218, the notice of appeal shall be treated as filed on the same day as, but after, the entry of . . . an order disposing of it.” Md. Rule 8-202(c); *Edsall v. Anne Arundel Cnty.*, 332 Md. 502, 508 (1993).

Maryland Rule 2-534 allows the court to amend its judgment if a party files a post-judgment motion within ten days of entry of the judgment at issue:

In an action decided by the court, on motion of any party filed *within ten days* after entry of judgment, the court may open the judgment to receive additional evidence, may amend its

findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

(Emphasis added). Under Maryland Rule 2-535, if the party files a post-judgment motion to revise within thirty days of judgment, the court may exercise its revisory power over the judgment, or, if filed within ten days of judgment, the court may treat that motion as a motion under Maryland Rule 2-534:

(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.

In this case, the court entered the judgment dismissing Ms. Wedderburn’s second amended complaint on March 22, 2024. She filed two notices of appeal. She filed the first on the same day as her motion to reopen/revise the court’s judgment, citing Maryland Rule 2-535(a). That post-judgment motion was filed more than ten days but fewer than thirty days after the entry of judgment. What this means for Ms. Wedderburn’s case is that although the notice of appeal ordinarily would relate forward to the disposition of her motion to reopen/revise, it would only do so if her motion was timely, that is, if she filed it within ten days of the judgment dismissing her complaint. *See* Kevin F. Arthur, *Finality of Judgments and Other Appellate Trigger Issues*, § 17 (The Maryland State Bar Association ed., 3d ed. 2018); *see also* *Cave v. Elliott*, 190 Md. App. 65, 80–81 (2010) (treating a post-judgment motion styled as a “Motion for Reconsideration” as a Maryland Rule 2-534 motion because it was filed within ten days of judgment). But she didn’t. And

the substantive question about voluntary dismissal arose only in connection with the post-judgment motion, so the first notice of appeal doesn't and can't bring that before us.²

And, unfortunately, the second notice of appeal doesn't help either. That notice of appeal was filed on April 22, 2024, thirty days after the judgment dismissing her complaint. She then filed a motion to vacate the judgment dismissing her complaint, citing Md. Rule 2-535(a), on April 23, 2024, thirty-one days from the judgment, and it was that motion that raised the voluntary dismissal theory she seeks to raise here. Because these motions were not timely under Maryland Rule 8-202(c)—meaning within ten days of judgment—her second notice of appeal cannot reach the court's disposition of her motion to vacate. When a party files a notice of appeal on the same day as the order being appealed, our rules consider the appeal to have been filed on the day after the order, not on the same day as the order. Md. Rule 8-202(c). And because Ms. Wedderburn didn't file a new notice of appeal after the disposition of the motion to vacate, that disposition, and that question, is not before us, and we cannot reach the merits of the order disposing of her post-judgment motions.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
APPELLANT TO PAY COSTS.**

² For what it's worth, Ms. Wedderburn's first notice of appeal was timely with regard to the judgment dismissing her complaint for a breach of contract, and she could have challenged that decision. But she didn't, and we'll only address the issues she is trying to raise on appeal. *See* Maryland Rule 8-504(a)(6) (briefs filed in this Court must contain an "[a]rgument in support of the party's position"); *see also Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 241 (2004) (appellant must "articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant's initial brief").