Circuit Court for Wicomico County
Case No. 22-C-16-001138

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 476

September Term, 2017

CHARLES ALFRED LEGAGNEUX, JR., et al.

v.

DONTE HAYES, et al.

Berger,
Shaw Geter,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: June 6, 2019

Appellants, Charles Alfred Legagneux, Jr., Richard Lionel Hall, and their automobile liability insurance carriers, Allstate Insurance Company and USAA General Indemnity Company, respectively, initiated an interpleader action in the Circuit Court for Wicomico County, the underlying reasons for which we shall discuss, *infra*.

In this appeal, appellants present three questions, which we have recast for clarity:[1]

> Did the circuit court err as a matter of law in striking their First Amended Complaint, without a hearing, and in contravention of Maryland Rule 2-322(e)?

For the reasons that follow, we shall dismiss the appeal and remand to the circuit court for further proceedings.

BACKGROUND

On October 13, 2015, Legagneux was driving a vehicle owned by Hall, which collided with a vehicle operated by Donald Hayes on U.S. Rt. 50 in Wicomico County. Hayes died as a result of injuries suffered in the collision.

[1] In their opening brief, appellants ask:

1. Did the trial court err as a matter of law in striking the First Amended Complaint?

2. Did the trial court commit error and/or abuse its discretion in granting the Motion to Strike the First Amended Complaint without a hearing as requested by Appellants?

3. Did the trial court commit error by granting relief which is not permitted by Rule 2-322(e)?

Proceedings

On August 16, 2016, no survival or wrongful death claims having been initiated, appellants joined in the filing of a Complaint for Interpleader, conceding liability for Hayes' death to his several survivors, both adults and minors, who would be entitled to maintain a wrongful death action. The potential plaintiffs, the known Hayes beneficiaries, are the appellees.[2] Following service on all appellees, the court scheduled a hearing for January 5, 2017 to determine the appropriateness of the interpleader action and to consider preliminary requests for relief.

Appellees, Peggy Clay, Desiree Hurst, Chrissy Hayes, with her two minor children, D.H. and J.H., and Alicia Beckworth, who appeared on behalf of her minor child, D.B., all attended the hearing.[3] Counsel for Clay informed the court that he wanted to work with the potential beneficiaries to resolve the apportionment of the policy proceeds without further litigation. He also informed the court that due to unresolved issues with third party insurance, it would be premature to release the tortfeasor at that point. With the agreement of all parties who were present, including appellants' respective counsel, the court signed

[2] Appellees are the decedent's mother, Peggy Hayes aka Peggy Clay (Clay), his estranged wife, Chrissy Hayes, his three minor children, D.B., D.H., J.H., and his four emancipated adult children, Donte Hayes, Ahmad Dennis, Shi'don Hayes, and Desiree Hurst.

[3] Donte Hayes, Ahmad Dennis, and Shi'Don Hayes, had not filed answers to the complaint at the time of the hearing, nor did they appear for the hearing. Desiree Hurst had appeared for the hearing, but has not filed an answer to the complaint.

the two proposed orders[4] provided by appellants. Each order was dated January 5, 2017, granting to each insurer the authority to deposit $300,000 with the court for later apportionment among the beneficiaries once they had negotiated or litigated their respective interests.[5]

The genesis of this appeal was the filing, on March 21, 2017, of appellants' First Amended Complaint for Interpleader and Declaratory Relief, which sought to limit their liability to $100,000 per policy.[6] Significant to the issues presented in this appeal were appellants' joint request, in paragraph (H), that

> this Honorable Court rescind the Orders directing USAA and Allstate to pay the sums of $300,000 into the Court and instead, order and direct that USAA and Allstate pay into the Court the sum of $100,000**.**

In their first amended complaint, appellants also requested that the court enter an order limiting the maximum liability of each of the insurers to $100,000.

[4] Neither the proposed orders filed with the original complaint, nor the proposed orders for the first amended complaint were included in the record extract, but are available on MDEC.

[5] It was the stated intent of the complaint that, once the funds were in the custody of the court, the claimants could negotiate amongst themselves for an equitable distribution of the policy benefits. This approach has come to be known as a "pie-slicing" action.

"Pie-slicing interpleader, involving adverse personal injury claimants, merely anticipates judgments in favor of those claimants against the tortfeasor, and anticipates that claims on those judgments will then be asserted against the stakeholder." *Lawhorne v. Employers Ins. Co. of Wausau*, 343 Md. 111, 123 (1996).

[6] Thus, appellants effectively interjected into the lawsuit a coverage issue, under the terms of their respective policies. Questions of coverage or policy construction were neither briefed nor argued below and, therefore, are not before us. Further, they are not relevant to the procedural challenges presented in this appeal.

Appellee Clay filed a motion to strike the first amended complaint, arguing that appellants received the preliminary relief they had requested – payment of funds into the court – and were no longer involved in the litigation. Clay argued further that appellants had offered the $600,000 as settlement of the potential claims against them, which had been accepted by the appellees at the hearing. Thus, counsel concluded, appellants were bound to their offer.

In response, appellants argued that there was no reason for the court to not allow their amended complaint because it was filed in compliance with the rules and well before the scheduled trial date. Further, the insurers again asserted that the limit of recovery from each policy is $100,000, because there was only one victim. They further denied the existence of any agreement with appellees. Appellants also filed a request for a hearing on the motion to strike and response thereto.

On April 20, 2017, the court granted Clay's motion to strike the amended complaint, without further hearing. Included in the order were directions to the appellant insurers requiring that they each pay $300,000 into the court within ten days, the funds not having been previously deposited. Appellants' motion for reconsideration followed, which also asked the court to certify its order granting the motion to strike as a final judgment.[7] This appeal also followed.

[7] In their motion for reconsideration appellants concede that:

> [T]he purpose of the First Amended Complaint for Interpleader and Declaratory Relief was to correct an error that had been made in the filing of the original Complaint with respect to the amount of insurance proceeds under the applicable policies that were subject to the various wrongful death

DISCUSSION

Interpleader

Interpleader proceedings are governed by Md. Rule 2-221. After service of process on potential claimants, the court must convene a hearing as required by Rule 2-221(b). The circuit did so and thereafter entered the orders proposed by appellants (the January orders) authorizing the deposits by the insurers after hearing from counsel for the then-represented parties and from parties not yet represented. Whether those orders are final and appealable is disputed by the parties.

In an action for interpleader the complaint "shall specify the nature and value of the property[.]" Rule 2-221(a). That requirement was clearly satisfied based on the representations of appellants. The Rule further requires that, following an opportunity for the defendants to be heard, a hearing shall be held in order to determine if any preliminary relief should be afforded. Rule 2-221(b). The trial court conducted such a hearing on January 5, 2017.

At the conclusion of the January 5 hearing, without objection from those parties who had appeared – indeed, with their approval – the court entered two orders affording the insurers the authority to deposit with the court the $300,000 limits of each policy.

> claims at issue in this case; an error compounded by mistaken representations made by the attorneys for USAA and Allstate at the time of the original hearing in this matter that took place on January 5, 2017[.]

However, due to a deficiency in the filing, the Clerk's office struck the motion for reconsideration. The record reflects that it was never refiled and, therefore was not ruled on.

Finally, following the initial hearing, and any order entered as a result of that hearing, the Rule provides that the parties are given 15 days to request a jury trial. Rule 2-221(c). Additionally, the Rule provides that, within the time period afforded in the preliminary order, whoever is designated as a plaintiff, shall file a complaint asserting its claim. Rule 2-221(d). No further substantive action occurred of record, by any of the parties, until March 21, 75 days later, when appellants filed their first amended complaint. Appellees focus their arguments on the two phases of an interpleader cause of action that is alluded to in the rules and discussed in *Lawhorne v. Employers Ins. Co. of Wausau*, *supra*.

We agree with appellees' characterization of an interpleader proceeding having two phases. In the first phase of an interpleader action, appellees explain that the court "determines the amount of money or property to be deposited with the Court, that such deposit is appropriate, and orders the deposit, generally allowing the original interpleader plaintiffs to walk away from the proceedings." *See* Rule 2-221(a)-(b). Whereas, Phase II "generally involves only those who have a claim against the funds deposited and deals with the proper apportionment of those funds amongst the claimants." (Citation omitted). *See* Rule 2-221(c)-(d).

Appellees contend that "Phase I of the Interpleader had been concluded and the Court had entered an Order of Interpleader, a final determination of the funds to be paid by Appellants." Because the January orders afforded the relief the insurers requested, and to which appellees had consented in their timely filed answers to the complaint, they aver that "[a]n interpleader plaintiff should not be permitted to, months or even years after a Phase

I hearing, go back and amend their Complaint as a backdoor attempt to modify the previously entered Order of Interpleader." It is to this point that we disagree and begs the question we will now address, *infra*.

Is the Appeal Properly Before this Court?

Preliminarily, before addressing the substantive issues presented, we must determine whether this appeal is properly before this Court. Appellate review is authorized only after the trial court has entered a final judgment. Md. Code (1974, 2013 Repl. Vol.) Courts and Judicial Proceedings Article (CJP), § 12-301. As we pointed out in *Murphy v. Steele Software Sys. Corp*., 144 Md. App. 384 (2002), "[i]t is our duty, in appropriate cases, to raise, and decide, issues of our jurisdiction …." 144 Md. App. at 392 (citing *Harford Sands, Inc. v. Levitt & Sons, Inc*., 27 Md. App. 702, 706 (1975)).

"As a general rule, under Maryland law, litigants may appeal only from what is known as a 'final judgment.'" *URS Corp. v. Fort Myer Constr. Corp*., 452 Md. 48, 65 (2017) (citing CJP § 12-301). "To constitute a final judgment, a trial court's ruling "must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding.'" *Md. Bd. of Physicians v. Geier*, 451 Md. 526, 545 (2017) (quoting *Harris v. State*, 420 Md. 300, 312 (2011)). A final judgment must "leave nothing more to be done in order to effectuate the court's disposition of the matter." *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989). We have explained that "[w]hether a judgment is final, and thus whether this Court has jurisdiction to review that judgment, is a question of law to be reviewed *de novo*." *Baltimore Home All., LLC v. Geesing*, 218 Md. App. 375, 381 (2014).

At this point, we recall that appellants included a prayer in their Motion for Reconsideration requesting that the trial court certify its order of April 20, 2017, as a final order pursuant to Md. Rule 2-602(b). As noted above, the record does not reflect that the circuit court ever granted that request, or otherwise ruled on the motion.

Parenthetically, we observe that the amended complaint had no effect on the January orders. Despite their request within the amended complaint that the court rescind the previously entered orders, the court could not take any action without a motion requesting that it do so. *See* Rule 2-311(a) ("An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, and shall set forth the relief or order sought.").

In their opening brief, appellants assert their right to freely amend their complaint at any time prior to 30 days before a trial date. In their reply brief, however, appellants argue that the January orders were not final or revisable, but that the April order was. For support, appellants assert that "[t]he January 5, 2017 Order did not terminate the action…. [t]he case continued. The January 5, 2017 Order did not compel the Appellants to pay $300,000 each into the Court Treasury by a date certain…. [and] did not dismiss the Appellants from the action."

However, that assertion as to why the January orders were not final or appealable is exactly why the same could be said for the April order – appellants were not dismissed from the action or released from liability. Additionally, neither of the orders concluded the first phase of the interpleader action, as there was no deadline set for the filing of claims. *See* Rule 2-221(b)(2) (allowing the court to "require the defendants to interplead as to the

property within a time specified"); Rule 2-221(d) (directing the designated plaintiff to file a complaint asserting its claim to the property "[w]ithin the time *specified in the order of interpleader*" (emphasis added)).

The two January orders contained the following language in each, differing only in the name of the insurance company:

> It is hereby ORDERED this [5th day of January, 2017], by the Circuit Court for Wicomico County, Maryland, that [insurance company] is granted permission to deliver to the Clerk of the Circuit Court for Wicomico County, Maryland, and the Clerk of the Circuit Court for Wicomico County, Maryland, is authorized to receive the sum of $300,000 to be held in an appropriately insured account at a recognized financial institution pending further Order for the disposition of the said proceeds by this Court.

The April order, ruling on the motion to strike the amended complaint, provided:

> Having read and considered [Clay's] Motion to Strike Amended Complaint, and any response thereto, it is hereby ORDERED as follows:
>
> A. The First Amended Complaint for Interpleader and Declaratory Relief is hereby Stricken [sic];
>
> B. Plaintiff Allstate Insurance Company is hereby Ordered to pay $300,000 into the Court within ten days of this Order, said funds to be apportioned amongst the wrongful death beneficiaries; and
>
> C. Plaintiff USAA General Indemnity Company is hereby Ordered to pay $300,000 into the Court within ten days of this Order, said funds to be apportioned amongst the wrongful death beneficiaries.

Appellants also rely on the language of the January orders that lack direction compelling them to deposit the monies within a set period of time, unlike the April order. We conclude from the record that the January orders, signed and entered by the court, had been drafted and provided by the appellant insurers with the filing of the initial complaint.

The proposed orders for the first amended complaint contained the same language, only differing in the amount to be deposited.[8]

Amendments to Pleadings and Motions to Strike

We have said that the determination of whether "'to allow amendments to pleadings or to grant leave to amend pleadings is within the sound discretion of the trial judge.'" *A.C. v. Maryland Comm'n on Civil Rights* (MCCR), 232 Md. App. 558, 579 (2017) (quoting *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443-44 (2002)). Although amendments are to be "freely allowed when justice so permits," Rule 2-341(c), a circuit court's rulings on such motions will be overturned only upon a showing of a clear abuse of that discretion. *MCCR*, 232 Md. App. at 579 (quoting *Schmerling*, 368 Md. at 444).

While, "it is the rare situation in which a court should not grant leave to amend, an

[8] In an alternative argument, appellants also contend that "[t]his appeal is also viable under the Collateral Order doctrine." In order for the collateral order doctrine to apply, the order must satisfy the four elements: "'(1) it must conclusively determine the disputed question; (2) it must resolve an important issue; (3) it must be completely separate from the merits of the action; and (4) it must be effectively unreviewable on appeal from a final judgment.'" *Cabrera v. Mercado*, 230 Md. App. 37, 100 (2016) (quoting *Osborn v. Bunge*, 338 Md. 396, 403 (1995)).

For support, appellants aver that: (1) the April order "conclusively determine[d]" the amount each insurance company had to pay to the court; (2) the only two issues for the court to determine were the amount of available insurance coverage and the equitable division of the funds; (3) the "merits of the action" will involve a decision of how to divide the insurance proceeds among the beneficiaries; and (4) the "final judgment" will apportion the shares among the beneficiaries, "at which time the then-plaintiff insurance companies will have no legal recourse by which they may obtain the return of the policy limits awarded in error."

This argument, however, was not raised in or decided by the circuit court. As such, we decline to consider it. *See* Rule 8-131(a).

amendment should not be allowed if it would result in prejudice to the opposing party or undue delay, such as where amendment would be futile because the claim is flawed irreparably." *RRC Ne., LLC v. BAA Maryland, Inc*., 413 Md. 638, 673-74 (2010) (internal citations omitted).

In their initial complaint, appellants sought the court's entry of an order permitting the insurance companies to each deposit $300,000 with the Clerk of the circuit court. Following the January 5 hearing, the court signed appellants' proposed orders affording them the preliminary relief sought.

Nothing substantive having occurred, appellants, 75 days later, filed an amended complaint, seeking nothing more than to reduce the insurers' limits of liability from a total of $600,000 to $200,000. As we have explained, Clay responded with a motion to strike the amended complaint.

While contesting the motion to strike the amended complaint, and insisting that there was never an agreement that appellees were entitled to $600,000, appellants acknowledged "that the allegations in the original Complaint may have been confusing, and that the concept of 'split coverages' in liability policies is not readily understood, even by many attorneys." Further, they "deny that $300,000 from each policy is or was to be distributed among the several [appellees], and there is no Order or agreement to that effect." There is, of course, no order to that effect – or to any effect. The interpleader proceeding was essentially in recess at that point and the mandates of Rule 2-221(b) were not pursued by either party. This point was as much conceded in their answer to Clay's motion to strike when they "agreed that it was proper for the Court to defer an Order directing that funds

be interpleaded." Indeed, the discussion between counsel and the court at the January hearing was the desire to resolve the apportionment issues without the need for trial and the need to set a follow-up hearing. Counsel for Clay also expressed concern for an order to be entered at that point, allowing the tortfeasor [Legagneux] to be released from liability with the deposit of the insurance money without resolution of the third party insurance claims. Despite their express request for the same in both their complaint and at the hearing, the proposed orders provided by appellants and ultimately executed by the court did not include such a release as is permitted pursuant to Rule 2-221(b)(5). That supports a conclusion that the January orders are not final.

Appellants also "determined by virtue of the Answers of the [appellees], and other evidence, that under the terms of their policies, all of the [appellees'] claims are derivative from the death of Donald Hayes." That, they contended, meant that the applicable policy limits are $100,000 for each policy. As we have said, we shall not undertake a discussion of policy limits or policy interpretation – subjects that are not relevant to the procedural challenges at issue – namely, is there an appealable order before this Court.

Appellants contend that "[t]he sole purpose of the amendment was to correct any ambiguity as to how much the Appellees were entitled to receive from each of the policies." Because of that, they assert, the "Motion to Strike was improper; and the granting of the Motion was error on the part of the Circuit Court." In fact, the purpose of the amendment was not to correct an "ambiguity", rather, it was to reduce the exposure of the insurers by some $400,000.

An amendment to a pleading may be filed without leave of court no later than 30 days prior to the trial date, if there is no scheduling order. Rule 2-341(a). A party may file a motion to strike the amendment within 15 days after being served with the amended pleading. Rule 2-341(a). In the present case, there was no scheduling order in place at the time that the first amended complaint was filed. While the Rule provides that amendments "*shall be freely allowed[,]*" it also qualifies that right with "*when justice so permits*." Rule 2-341(c) (emphasis added). Appellants fail to direct our attention to any caselaw to support its contention that the motion to strike should have been denied or that "justice so permits" an amendment of this nature and timing in interpleader actions.

Rather, they rely only on *Daley v. United Servs. Auto. Ass'n*, 312 Md. 550 (1988), which involved the issue of solatium damages claimed by parents of the deceased minor in an accident. There, the Court concluded that "[s]olatium injuries, as any other consequential injuries, are subject to the each person limit." 312 Md. at 560. Based on that holding, appellants contend that "[t]he Order which was granted by the Circuit Court was contrary to the language of the contracts and the principle of law established by *Daly v. United Services*[.]" (Internal citation omitted). Reliance on *Daly* is clearly in support of appellants' attempt to draw us into a discussion of policy interpretation which, as we have noted, we decline to do.

In our view, the January orders did not result in a final determination. Accordingly, the language of the April order reiterating and clarifying the January orders was not an appealable final or interlocutory order. Similarly, because the order granting the motion to

strike the first amended complaint was not conclusive and did not have the effect of putting the appellants out of court, it was also not an appealable order.

Order Directing the Deposit of Fees

Alternatively, we recognize that Maryland courts have "specifically held that an order of an equity court, directing that money be paid into court pending further disposition, is neither appealable as an interlocutory order 'for the payment of money' within the meaning of what is now [§ 12-303(3)(v)] nor appealable as a final order." *Anthony Plumbing*, 298 Md. 11, 23 (1983) (citing *Dillon v. Conn. Mutual Life Ins. Co.*, 44 Md. 386, 394-396 (1876)).

In *Anthony Plumbing*, the Court of Appeals determined that "the portion of the trial court's order, directing that [appellant] pay into court a sum of money to cover the cost of the proceedings before the master, will not support an appeal at this time." 298 Md. at 23. Similarly, in *Dillon v. Conn. Mutual Life Ins. Co.*, *supra*, the Court determined that no appeal lies when the order

> simply directs the money to be brought in by a given day, to be deposited in bank to the credit of the cause subject to further order, and … was done for the sole purpose of placing the fund out of danger and in a state of greater security for the benefit of all concerned, and that is its only effect…. [T]he order does not profess to determine or affect any rights which either of the litigating parties may have to this fund, except the mere right to retain custody of it pending the litigation, and that is the necessary effect of every such order.

Dillon, 44 Md. at 395.

In the case at bar, the April order tracked the January orders and imposed nothing that had not been provided in the earlier orders. The Rule governing interpleader actions

permits the court to "direct the original plaintiff … to deposit the property or the value of the property into court to abide the judgment of the court …, conditioned upon compliance by the plaintiff with the future order or judgment of the court with respect to the property[.]" Rule 2-221(b)(3). Those sentiments were sought in the original complaint and, although not reflected in appellants' proposed orders, were reiterated at the January hearing, when counsel for both insurance companies were asked by the court why they couldn't just deposit the money, they each stated that to do so, "I think we need an Order" and "We need an Order." Appellants desired an order so that they could deposit the amount of the policy limits with the court and be released from further involvement; they provided proposed orders for the court to sign; then, once they noticed an error in their representations for the limitations of each policy, they rely on the lack of direction provided in their orders to sidestep the issue. As we pointed out, *supra*, the proposed orders provided by appellants with their amended complaint mirror the January orders, with the exception of the amount to be deposited.

The court did not exceed the bounds of its authority by granting the requested relief in the April order. Nor did the April order dispose of appellants' rights or ability to continue to challenge either order in a motion or other appropriate proceeding. The April order did not put any of the parties out of court. It did not, as the Court of Appeals said in *Md. Bd. of Physicians v. Geier*, *supra*, "decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding." 451 Md. at 545 (internal quotations and citations omitted). We

repeat – a final judgment "must leave nothing more to be done in order to effectuate the court's disposition of the matter." *Rohrbeck*, 318 Md. at 41.

Hearing Requirement

While not necessary to the disposition of this appeal, we briefly address the hearing requirement argument.

Appellants contend that "[a] hearing should have been ordered with respect to [Clay's] Motion to Strike the First Amended Complaint because the court's ruling on the Motion was dispositive of the claims made by USAA and Allstate." This, they assert, is because "[t]he Order of the Circuit Court granting the Motion to Strike on 20 April 2017 unequivocally disposes of the claims of USAA and Allstate and conclusively settles those claims with respect to the Appellees contrary to the language of the policies and Maryland law."

Maryland Rule 2-311 prescribes the hearing requirement for motions:

> A party desiring a hearing on a motion … shall request the hearing in the motion or response under the heading 'Request for Hearing.' The title of the motion or response shall state that a hearing is requested. Except when a rule expressly provides for a hearing, *the court shall determine in each case whether a hearing will be held*, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

Md. Rule 2-311(f) (emphasis added).

We have explained that a

> "dispositive decision is one that conclusively settles a matter. If the possibility that the court might reconsider or revise its decision would prevent that decision from being dispositive of a claim or defense, then even final, *i.e*. appealable, judgments could be said not to be dispositive, because even they may be subject to revision."

Pelletier v. Burson, 213 Md. App. 284, 292–93 (2013) (quoting *Lowman v. Consolidated Rail Corp*., 68 Md. App. 64, 76 (1986)).

The Rule governing amendments does not require a hearing to resolve a motion to strike or opposition to an amended pleading. *See generally* Rule 2-341. The Rule governing motions mandates a hearing if the request is made in accordance with its requirements. *See* Rule 2-311(f) (providing that "[a] party desiring a hearing on a motion … shall request the hearing *in the motion or response* …." and "[t]he title of the motion or response *shall state that a hearing is requested*" (emphasis added)).

The Rule also provides that "the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section." Rule 2-311(f). As discussed above, the grant of the motion to strike the amended complaint was not dispositive of appellants' ability to file further amendments or to litigate, in some appropriate proceeding, their policy limit assertions.[9] Accordingly, the court was not required to hold a hearing on the motion to strike.

In conclusion, we find that neither the January orders, nor the April order, were final, nor were they appealable interlocutory orders. We shall dismiss this appeal and remand the matter to the circuit court for further appropriate proceedings.

[9] Additionally, appellants' request for a hearing was not filed in strict compliance with Rule 2-311(f). At no point in the caption or the body of their answer to the motion to strike do they request a hearing. Instead, the request for hearing it appears in a separate filing, following 100 pages of the exhibits attached in support of their answer.

APPEAL DISMISSED; CASE REMANDED TO THE CIRCUIT COURT FOR WICOMICO COUNTY FOR FURTHER PROCEEDINGS. COSTS ASSESSED TO APPELLANTS.