UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0529

September Term, 2012

WILLIAM YOUNG

v.

MAYOR & CITY COUNCIL OF
BALTIMORE CITY

Krauser, C.J.,
Nazarian,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: June 2, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

William Young brought an action against the Mayor and City Council of Baltimore City ("the City"), alleging that he was wrongfully discharged from the Baltimore City Fire Department solely because he had filed a workers' compensation claim. On the day on which his case was set for a jury trial, the Circuit Court for Baltimore City granted judgment in favor of the City on grounds not advanced by either party. In this appeal, the City makes no argument that the court's ruling was correct. Instead, the City asks us to affirm the judgment on grounds on which the trial court did not rely. We decline to address those alternative grounds and, instead, remand the case for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

A. Young's Discharge from the Baltimore City Fire Department

William Young worked as a firefighter and paramedic with the Baltimore City Fire Department from 1998 until his eventual discharge in 2007.

In early January 2007, during a two-week vacation, Young consulted with a private physician about pain in his right shoulder that he had been experiencing for several months. An MRI taken on January 15, 2007, showed an extensive "labral tear" of the cartilage in Young's shoulder, as well as other injuries to the shoulder. The practitioner discussed the test results with Young and referred him to an orthopedist.

Young returned from his vacation on the morning of January 22, 2007. On that same morning, he reported to the Fire Department that he had injured his shoulder while shoveling snow outside of the fire station. Young sought treatment from the Public Safety Infirmary

("the PSI"). Young claimed that he felt a "tearing" sensation while shoveling snow. According to the PSI notes, Young denied the existence of any prior shoulder injury.

Young was diagnosed with a torn right rotator cuff and re-assigned to light duty. Young informed the PSI that he intended to obtain treatment authorization from the City's workers' compensation carrier. On February 23, 2007, Young filed a claim for a line-of-duty injury with the Workers' Compensation Commission. Young would receive a higher level of benefits if it were determined that he suffered his injury in, as opposed to outside, the line of the duty.

At a subsequent checkup, Young was confronted with the MRI that revealed the tears in his shoulder one week before the reported workplace accident. Young withdrew his workers' compensation claim, but informed his superiors that he intended to re-file the claim.

The Fire Department filed internal charges against Young for knowingly misleading the PSI into treating his preexisting injury as a workplace injury. The charging document alleged that Young violated regulations that require Fire Department personnel to "[a]ct with courage and honesty in all situations[,]" and that Young committed fraud or other acts of dishonesty in violation of the Baltimore City Civil Service Rules.

After an investigation, the Fire Department concluded that the charges were merited and recommended that Young's service be terminated. On October 25, 2007, Young was notified that the charges had been upheld and that he had been dismissed.

B. Determinations from the Civil Service Commission and Workers' Compensation Commission

Young appealed his dismissal to the Baltimore City Civil Service Commission. A hearing officer concluded that Young "was deceitful about his preexisting shoulder injury," but recommended that Young serve only a six-month suspension. In its final decision, however, the Civil Service Commission rejected that recommendation and upheld Young's discharge.

Young then re-filed his claim with the Workers' Compensation Commission. In addition, he asked the Civil Service Commission to reconsider its decision and to reserve judgment until his workers' compensation claim was resolved. The Civil Service Commission denied his request, and Young did not seek judicial review of that decision.

At his hearing before the Workers' Compensation Commission, Young acknowledged that he had been treated for shoulder injuries shortly before the alleged workplace incident. He testified, however, that he had been fully capable of working until he suffered a work-related injury while shoveling snow. The Workers' Compensation Commission found that his disability resulted from an accidental injury arising out of and in the course of his employment. In an order issued on July 14, 2008, the Commission awarded compensation for an approximately nine-week period of temporary total disability.

After the City contested the award, the parties reached a settlement agreement. The City agreed to pay Young a lump-sum of $10,000 in exchange for release of all workers' compensation claims arising out of his alleged injury and disability.[1]

C. Action for Wrongful Discharge

On October 25, 2010, exactly three years after he was discharged, Young filed a complaint in the Circuit Court for Baltimore City. The complaint alleged that Young was terminated "solely because he filed a claim . . . under the Maryland Workers' Compensation law" in violation of section 9-1105 of the Labor and Employment Article of the Maryland Code.[2] Young requested reinstatement to his former position with full benefits credit, and a judgment for back pay and interest in the amount of $250,000.

The City filed a motion for summary judgment on December 14, 2010. The City advanced three grounds for summary judgment: (1) that it was undisputed that Young was

[1] The release specifically stated that Young accepted the City's payment "in final compromise and settlement of any and all Claims" that he "might now or could hereafter have under the provisions of the said Law [*i.e.*, the workers' compensation statutes], arising out of the aforesaid injury or disablement or the disability resulting therefrom." In addition, he "release[d] and forever discharge[d]" the City "from all other claims of whatsoever kind which might or could hereafter arise under the Law from the said injury, disablement or disability."

[2] That section, titled "Employee discharge for filing claim," provides: "An employer may not discharge a covered employee from employment solely because the covered employee files a claim for compensation under this title." "Discharging an employee solely because that employee filed a worker's compensation claim contravenes the clear mandate of Maryland public policy." *Ewing v. Koppers Co.*, 312 Md. 45, 50 (1988). Consequently, if an employer discharges an employee solely for filing a workers' compensation claim, the employee may have a common-law claim for abusive discharge. *See id.*

fired because the City believed that he had filed a false claim; (2) that Young failed to exhaust his administrative remedies; and (3) that Young failed to give notice of his intention to sue, pursuant to the Local Government Tort Claims Act (LGTCA).[3]

The original complaint had included an allegation that: "[t]he only reason ever given to Plaintiff for his termination was that the Fire Department felt he had filed a false workers' compensation claim." On January 19, 2011, Young filed an amended complaint, which omitted that language. The amended complaint also alleged that Young had complied with the LGTCA by serving timely notice of his claims "by hand on the Civil Service Commission," in conjunction with his administrative appeal. The amended complaint did not allege that Young had given notice to the City Solicitor. *But see* Maryland Code (1974, 2013 Repl. Vol.), § 5-304(c)(3)(i) of the Courts and Judicial Proceedings Article. Nor did the amended complaint allege that the notice had stated the time, place, and cause of the injury. *But see id.* § 5-304(b).

In response to the amended complaint, the City did not reassert its motion for summary judgment. Instead, the City filed an answer, in which it denied liability and asserted that Young's complaint failed to state a claim upon which relief could be granted.

[3] In general, under section 5-304(b) of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2013 Repl. Vol.), "an action for unliquidated damages may not be brought against a local government or its employees" unless the plaintiff gives written notice in person or by certified mail within 180 days after the injury, stating the time, place, and cause of the injury. For actions against Baltimore City, the plaintiff must give notice to the City Solicitor. *Id.* § 5-304(c)(3)(i).

The City listed a number of separate defenses, including governmental immunity and the lack of requisite notice to the local government, but not the defenses of res judicata or collateral estoppel.

D. Proceedings Before the Circuit Court

The court scheduled a jury trial for April 18, 2012. The City did not move for summary judgment on any ground before the trial.

Before jury selection on the morning of trial, the court inquired into preliminary issues. At that time, the City moved to dismiss the Fire Department from the action. The court granted the motion after Young agreed that the Fire Department was not a proper defendant.

The City then informed the court that its prior motion for summary judgment had been "withdrawn after [Young] filed an amended complaint." Nevertheless, the City asked that Young's claims be "dismissed" because Young had failed to comply with the LGTCA by giving notice to the City Solicitor within 180 days after his discharge. Young responded by claiming that because his claim was based on a statute (section 9-1105 of the Labor and Employment Article), he was not required to provide notice. *But see Hansen v. City of Laurel*, 420 Md. 670, 672-73 (2011) (holding that circuit court properly dismissed action for statutory discrimination claims because complaint failed to plead satisfaction of LGTCA notice provision); *Williams v. Maynard*, 359 Md. 379, 395 (2000) (holding that LGTCA notice requirement applied to action for unliquidated damages brought pursuant to statutory

waiver in Transportation Article). The court eventually rejected the argument that the LGTCA notice provision applied to Young's claim, but directed the City "to offer evidence that it ha[d] been prejudiced by lack of the required notice."

During the arguments on the City's motion, the court shifted its attention to an issue that neither party had raised. The court asked to review the Civil Service Commission's decision and directed the parties to discuss what it called the "more fundamental question" of whether the parties were "bound by the Civil Service Commission ruling" that upheld Young's termination. The court commented that any verdict in Young's favor would be "totally at odds with the finding of the Civil Service Commission." The court pressed further: "Why should you be able to re-litigate what was litigated . . . before the Civil Service Commission?"

The City asked the court to confine its ruling to the issue of the LGTCA notice. Nonetheless, the court reasoned that Young's claims had "previously been addressed by the Civil Service Commission[,]" which found that Young "committed dishonest acts and, therefore, the City was entitled to lawfully terminate him[.]" The court announced that it was "going to grant the Defendant's Motion for Judgment[.]"

At the court's direction, the parties then submitted a set of joint exhibits, and Young testified on the record. At the end of the proceeding, the court clarified: "I basically made a ruling . . . that the 180 day [notice requirement of the LGTCA] does not apply and that the Civil Service hearing result binds the Plaintiff." Although the court did not expressly refer

to res judicata or collateral estoppel in its decision, it clearly ruled, in substance, that the Civil Service Commission's decision precluded Young from relitigating the merits of the City's decision to terminate his employment.

A docket entry from April 18, 2012, states that the case was tried without the aid of a jury, that the court had granted a defense motion to have the Fire Department dropped as a defendant, and that judgment was entered in favor of the City. Ten days later, on April 28, 2012, Young filed a motion to alter or amend, contending that the court should not have rendered judgment based on the affirmative defenses of res judicata and collateral estoppel that the City never pleaded in an answer.

On May 3, 2012, the clerk docketed a written order granting judgment in favor of the City. The court, however, never signed a written order reflecting the dismissal of the claims against the Fire Department. *But see* Md. Rule 2-601(a) (requiring that "[e]ach judgment be set forth on a separate document").

Young noted an appeal on May 21, 2012, before the court had ruled on his motion to alter or amend.

FINALITY AND APPEALABILITY

Because the jurisdiction of this Court is circumscribed by constitutional provisions, statutory provisions, and rules, we have an obligation to ensure that appellate jurisdiction is authorized before addressing the merits of an appeal. *See Miller & Smith at Quercus, LLC v. Casey PMN, LLC*, 412 Md. 230, 240 (2010) (citing *Biro v. Schombert*, 285 Md. 290, 293 (1979)). We are satisfied here that we have jurisdiction.

A. Existence of Judgment Disposing of All Claims Against All Parties

Generally, a party must await the entry of a final judgment before taking an appeal. *See* Md. Code (1974, 2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article ("CJP"). A final judgment exists only if: the order is intended by the court as an unqualified, final disposition of the matter; the order adjudicates or completes the adjudication of all claims against all parties; and the clerk makes a proper record in the docket. *See Hiob v. Progressive Am. Ins. Co.*, 440 Md. 466, 489 (2014) (citing *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)). In addition, each judgment must be "set forth on a separate document." Md. Rule 2-601(a).

The court here never issued any document dismissing the claims raised against the Baltimore City Fire Department. The written order and the accompanying docket entry state only that judgment was entered in favor of the Mayor and City Council of Baltimore. Consequently, the separate document requirement has not been satisfied. *See Hiob*, 440 Md. at 489-90 (holding that, where summary judgment is entered against one defendant, a dismissal of claims against co-defendant also must be set forth on separate document).

Nevertheless, the parties may waive the separate document requirement of Rule 2-601(a) where the circuit court clearly intends that the clerk's docket entries be a final judgment and where no party objects to the absence of the separate document. *See Suburban Hosp., Inc. v. Kirson*, 362 Md. 140, 156 (2000). A docket entry in connection with the court proceeding on April 18, 2012, states: "Defense Motion to have Baltimore City Fire Dept. dropped as one of the Defendants was hereby Granted." The circumstances make it

reasonably clear that the court intended that this docket entry be the final judgment as to the Fire Department. Because no party has objected, they have waived the requirement of a separate document dismissing the claims against the Fire Department. *See Bd. of Educ. of Worcester Cnty. v. BEKA Indus., Inc.*, 190 Md. App. 668, 684 n.6 (2010), *aff'd in part, rev'd in part*, 419 Md. 194 (2011); *Collins/Snoops Assocs., Inc. v. CJF, LLC*, 190 Md. App. 146, 160 n.2 (2010).

B. Withdrawal or Disposition of Motion to Alter or Amend Judgment

Young filed a timely notice of appeal within 30 days after judgment was entered in the City's favor on May 3, 2012. Over the next several years, the processing of this appeal was delayed as a result of Young's unresolved motion to alter or amend the judgment.

In an appellate brief submitted in early 2013, the City argued that Young's claim of error was "not ripe for appeal," because the circuit court had not yet disposed of Young's motion to alter or amend. In response, this Court remanded the case to the circuit court "to rule on Appellant's timely filed Motion to Alter or Amend Judgment" and stayed the appeal until the entry of an order disposing of that motion.[4] On January 24, 2014, the circuit court entered an order granting Young's request to withdraw his motion to alter or amend. Young

[4] In arguments before this Court, Young characterized his motion to alter or amend as a nullity because it was filed before the entry of judgment. *But see* Md. Rule 2-534 (providing that a motion to alter or amend judgment filed after the announcement of judgment, but before entry of judgment, is treated as filed on the same day as, but after, the entry of judgment on the docket). Nevertheless, after receiving the City's brief, Young filed a line with the circuit court withdrawing his motion to alter or amend. He did not file a reply brief or a motion to inform this Court that the post-judgment motion had been withdrawn.

did not file another notice of appeal, but the case is properly before us because of the notice of appeal that he filed in 2012.

In most cases, the only method of obtaining review in this Court is to file a notice of appeal within 30 days after the entry of judgment. *See* Md. Rules 8-201(a), 8-202(a). The Rules, however, prescribe a different time period for noting an appeal when a party makes a timely motion to alter or amend pursuant to Rule 2-534.

Although Young filed his motion to alter or amend before the formal entry of judgment, Rule 2-534 requires that it be "treated as filed on the same day as, but after, the entry on the docket." In addition, although Young filed his notice of appeal before the court granted his request to withdraw his motion to alter or amend, the Court of Appeals has held that a notice of appeal filed "during the pendency" of a post-judgment motion under Rule 2-534 "will not lose its efficacy." *Edsall v. Anne Arundel Cnty.*, 332 Md. 502, 506 (1993). Instead, the "effect" of that notice of appeal "will be delayed until the trial court rules on the pending motion." *Id.* (discussing Md. Rule 8-202(c)).[5]

[5] Rule 8-202(c) states:

> In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion. If a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be

(continued...)

Under *Edsall*, therefore, it was unnecessary for Young to file another notice of appeal after the circuit court granted his request to withdraw his motion to alter or amend in 2014. His initial notice of appeal did "not lose its efficacy"; its "effect" was "merely delayed" until the circuit court ruled. *Id.*; *accord Bd. of Liquor License Comm'rs for Baltimore City v. Fells Point Café, Inc.*, 344 Md. 120, 134 (1996). Young's notice of appeal may be treated as if filed on the same day as, but after, the entry of the order denying his motion. *See* Md. Rule 8-202(c); *Edsall*, 332 Md. at 508 (explaining that "[p]rocessing of that appeal is delayed until the . . . disposition of the [post-judgment] motion").

QUESTIONS PRESENTED

As stated in Young's brief, the question presented is:

> I. Did the Circuit Court commit reversible error when it ruled that Appellant's claim was barred by the prior decision of the Civil Service Commission, thereby invoking *res judicata*/collateral estoppels [sic] when Appellee had previously abandoned those defenses?

The City has not responded to this question. Instead, the City argues that we should affirm the judgment on grounds on which the trial court did not rely. The City asks us to consider these questions:

---

[5] (...continued)
treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it.

Although Rule 8-202(c) speaks only of the situation where a party files a timely post-judgment motion *after* a notice of appeal has been filed, *Edsall* holds that the rule also applies where, as in this case, a party files a timely post-judgment motion *before* a notice of appeal is filed.

[II.] Did the Appellant fail to comply with the notice requirement of the Local Government Tort Claims Act when he attempted to sue the Mayor and City Counsel [sic] of Baltimore?

[III.] Did Appellee rebut Appellant's claim that Appellant was terminated for dishonesty, and thus, not "solely" for filing a workers' compensation claim?

As discussed below, we conclude that the circuit court erred by granting judgment on the basis of an affirmative defense that the City did not plead in its answer and for a reason that the City did not advance. We shall not address the merits of the City's additional defenses. On remand, the court should address any grounds for summary judgment only if the City properly puts those matters before the court and only after Young receives fair notice and opportunity to respond.

DISCUSSION

Because the circuit court disposed of this case in an informal oral ruling, based on reasons that neither party had ever advanced, the nature and grounds for the court's ruling were never absolutely clear. Nevertheless, we agree with Young's assertion that the court granted summary judgment against him on preclusion grounds.

The City's oral motion addressed "just the complaint on the pleadings" and contended that dismissal was mandated because Young failed to allege compliance with the LGTCA. The court converted the motion into a motion for summary judgment when it reviewed exhibits, including the opinion of the Civil Service Commission. *See* Md. Rule 2-322(c) ("If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be

granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment"). Even though the court did not use the term "summary judgment" in its oral ruling or in its written order, we accept Young's characterization of the ruling as a grant of summary judgment.[6]

Young contends that the court granted summary judgment on the basis of res judicata or collateral estoppel even though the court never used that specific language. We agree on this point, too. The substance of court's ruling was that Young's claims were precluded by the decision of the Civil Service Commission. The court re-stated the dispositive issue several times: in the court's words, "the question [was] is he bound by the earlier decision . . . that he was lawfully terminated."[7]

Young contends that the circuit court should not have granted summary judgment on those grounds. The essence of his argument is that he lacked notice and opportunity to

[6] The City does not directly dispute this description. In fact, the City's brief includes almost no discussion of the actual ruling. When the City does refer to the ruling, it calls the ruling a "dismissal." At the same time, however, the City relies upon matters outside of the pleadings and agrees that the applicable standard of review is the standard for a grant of summary judgment.

[7] The court's ruling appears to concern collateral estoppel or issue preclusion, rather than res judicata or claim preclusion. In the Civil Service Commission proceeding, Young had no opportunity to assert a claim that the City had terminated him solely for filing a workers' compensation claim. In fact, at the time of the Civil Service Commission proceeding, the City had not yet completed the process of terminating him. In these circumstances, the circuit court effectively held that the Civil Service Commission's decision precluded Young from the relitigating the issue of the City lawfully terminated his employment.

respond when the court raised the issue of preclusion on its own as a ground for judgment on the morning of trial. The City makes no argument to the contrary.

A. Effect of Failure to Either Plead or Raise Affirmative Defenses

Young's primary contention is that the City waived the defenses of collateral estoppel and res judicata because the City failed to plead those defenses. He argues that invoking defenses not raised in the answer undermined the "paramount" purpose of modern pleading requirements, which is to "provide[] notice to the parties as to the nature of [a] claim or defense[.]" *Liberty Mut. Ins. Co. v. Ben Lewis Plumbing, Heating & Air Conditioning, Inc.*, 121 Md. App. 467, 476 (1998), *aff'd on other grounds*, 354 Md. 452 (1999) (quoting *Scott v. Jenkins*, 345 Md. 21, 27-28 (1997)) (quotation marks omitted).

With few exceptions, "[e]very defense of law or fact to a claim for relief in a complaint . . . shall be asserted in an answer[.]" Md. Rule 2-323(a). Certain affirmative defenses must be "set forth by separate defenses" in an answer, including "collateral estoppel as a defense to a claim" and res judicata. Md. Rule 2-323(g)(5), (g)(14); *see Boyd v. Bowen*, 145 Md. App. 635, 654 (2002). Although the City listed a number of affirmative defenses in its answer, the City did not plead either collateral estoppel or res judicata as a separate defense.[8] Furthermore, at no time did the City take any steps to amend its answer in accordance with Md. Rule 2-341(a) so as to add those defenses.

[8] Nor did the City include the affirmative defense of release even though the City paid Young $10,000 for a release that might or might not encompass the claim that he has asserted in this case.

When a party has failed to plead any of the defenses enumerated in Rule 2-323(g), "the plaintiff may usually assume that there is no issue with respect to those defenses and that the case will proceed accordingly." Paul V. Niemeyer & Linda M. Schuett, *Maryland Rules Commentary* 215 (3d ed. 2003). "The requirement that affirmative defenses be set forth separately is not a mere nicety; it is designed to give notice to the plaintiff of the defenses asserted to his complaint." *Gooch v. Maryland Mech. Sys., Inc.*, 81 Md. App. 376, 384-85, *cert. denied*, 319 Md. 484 (1990). This requirement "prevents unfair surprise and enables a plaintiff to concentrate the focus of his discovery." *Id.* at 385.

In *Gooch*, this Court concluded that defendants waived the affirmative defense of privilege by failing to plead that defense and by failing to amend their answer. *Id.* at 384 (citing Md. Rule 2-323(g)(20)). We held that the circuit court could not properly have relied on that affirmative defense when the defendant first raised it in a summary judgment motion. *Gooch*, 81 Md. App. at 385. Similarly, in *Bowser v. Resh*, 170 Md. App. 614 (2006), we held that a trial court erred in granting summary judgment on the basis of a release signed by the moving party, because the defendant did not include the defense of release in an answer or amended answer as required by Rule 2-323(g)(12). *Bowser*, 170 Md. App. at 646 (citing cases including *Gilbert v. Washington Suburban Sanitary Comm'n*, 304 Md. 658, 661 (1985) (dicta commenting that "the question of workmen's compensation as an exclusive remedy should have been raised as an affirmative defense")); *see also Bagwell v. Peninsula Regional Med. Ctr.*, 106 Md. App. 470, 508 (1995) (holding that party waived defense of statute of

limitations by failing to plead that defense as required by Rule 2-323(g)(15)); *Ocean Plaza Joint Venture v. Crouse Constr. Co.*, 62 Md. App. 435, 451 (1985) (holding that court properly excluded evidence of waiver, where defense was not included in answer as required by Rule 2-323(g)(18)).

In *Gooch*, this Court emphasized that the plaintiff was prejudiced by the defendants' delay in raising a new defense at a late stage in the litigation. *Gooch*, 81 Md. App. at 385 ("[t]he fifteen days . . . [before] a response is required is simply insufficient to allow proper preparation for a defense not relied upon in the previous three years") (footnote omitted). Similarly, in *Bowser*, we emphasized that the defendants waited about 20 months after the release was signed before raising the issue of release for the first time in their motion. *Bowser*, 170 Md. App. at 643. In the instant case, the City was aware of the decision of the Civil Service Commission well before the answer was filed, and indeed even before the complaint was filed. The City should have raised a defense of collateral estoppel or res judicata in its answer. Yet the issue did not arise until moments before the court announced its ruling.

Even if the City had included those affirmative defenses in its answer, however, the court could not have granted summary judgment on those grounds until the City actually made that request. *See Hartford Ins. Co. v. Manor Inn of Bethesda, Inc.*, 335 Md. 135, 146-47 (1994); *Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 635 (1997) ("a trial judge may not grant summary judgment *sua sponte* in the total absence of a motion

for summary judgment by the parties, even when the factual and legal situation seems to cry out for it") (citations omitted).

Even though trial judges have some discretion to treat a motion to dismiss as a motion for summary judgment after providing the opportunity to present pertinent material (*see Worsham v. Ehrlich*, 181 Md. App. 711, 722 (2008)), the trial court should not grant summary judgment on a ground not advanced by the moving party. *See Davis v. Goodman*, 117 Md. App. 378, 394 (1997) ("a trial judge cannot, *sua sponte*, and without prior warning, appropriately grant summary judgment based on the plaintiff's failure to prove an element of his or her case if the defendant has not previously contended that the plaintiff's proof was deficient as to that element") (citation omitted). Young was not required to generate factual disputes regarding issues that the City had not raised. *See id.* (citing *Hartford Accident & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217, 262 (1996), *aff'd*, 346 Md. 122 (1997)).

In sum, the court could not properly grant summary judgment on defenses that the City never included in an answer, that the City never advanced in its motion to dismiss, and that the City expressly asked the court not to consider. The interests of judicial economy here did not supersede Young's right to receive fair notice and opportunity to respond to defenses raised by the City.[9]

[9] Under circumstances much different from those presented here, this Court affirmed a grant of summary judgment on the ground of collateral estoppel, even though that defense (continued...)

B. Possible Alternative Grounds for Affirming Judgment

The City has not advanced any argument as to the defenses of collateral estoppel or res judicata, either in the trial court or on appeal. Instead, the City submits: "Although the [circuit] court dismissed [Young's] suit on other grounds, it was properly dismissed as a matter of law because [Young] failed to comply with the requirements of the Local Government Tort Claims Act."

The circuit court ruled against the City on this issue. The court reasoned that the notice provision of the LGTCA did not apply to Young's claims, because his claims were brought under a provision of the Workers' Compensation Act.[10] The court also reasoned that

[9] (...continued)
was not included in an answer or amended answer. *See Campbell v. Lake Hallowell Homeowners Ass'n*, 157 Md. App. 504, 528 (2004). None of the reasons we mentioned in that case are applicable here: it was not "understandable" that the City would fail to raise the defenses of collateral estoppel and res judicata because the agency decision was available well before the answer was filed; special circumstances were not necessarily present because the decision was not made by the same court; we decline to exercise discretion to decide this issue *sua sponte*, because neither party has yet argued the merits of the preclusion issue; and Young suffered prejudice because the defense was raised by the court informally during an oral presentation about the City's unrelated motion. *Cf. id.* at 526-29 (citing *Arizona v. California*, 530 U.S. 392, 412 (2000); *Johnston v. Johnston*, 297 Md. 48, 59 (1983)).

[10] *But see* CJP § 5-304(b) (requiring notice for any "action for unliquidated damages . . . brought against a local government"). Young's claim is not a statutory claim; it is a common-law abusive discharge claim, in which Young alleges that he was fired in violation of a clear mandate of public policy, which, in this case, is reflected in a statute. *Ewing*, 312 Md. at 50. Nonetheless, even if Young's claim were a statutory claim, the LGTCA would still apply. *Hansen*, 420 Md. at 672-73 (holding that LGTCA applied to statutory discrimination claims); *Williams*, 359 Md. at 395 (holding that LGTCA applied to claim made pursuant to Transportation Article).

"in the event that it's found that the 180-day rule applies and he didn't comply with it, it looks like the City still has the burden to prove that they would be prejudiced."[11]

"If the moving party offers more than one basis for granting summary judgment, and the trial court rules on only one basis, we ordinarily are confined to review the ruling on the basis on which the court granted summary judgment." *Coroneos v. Montgomery Cnty.*, 161 Md. App. 411, 422-23 (2005). If the reviewing court determines that the stated grounds for a grant of summary judgment are erroneous, the proper procedure is to remand to the trial court; only under exceptional circumstances should the appellate court consider any other potential grounds for summary judgment. *See Hagerstown Elderly Assocs. Ltd. P'ship v. Hagerstown Elderly Bldg. Assocs. Ltd. P'ship*, 368 Md. 351, 366 n.6 (2002) (citations omitted) (declining to reach appellee's argument that appellant stated no cause of action where court granted summary judgment only on statute of limitations ground, and noting that parties would have opportunity "more fully to develop their arguments" on remand). This Court does not "review the issues that did not form the basis for the court's ruling, unless the

[11] *But see* CJP § 5-304(d) ("unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, *upon motion and for good cause shown* the court may entertain the suit even though the required notice was not given") (emphasis added); *Prince George's Cnty. v. Longtin*, 419 Md. 450, 467 (2011) (explaining that claimant bears initial burden to show good cause before local government must show prejudice); *Hargrove v. Mayor & City Council of Baltimore*, 146 Md. App. 457, 461-62 (2002) (holding that "trial court may consider whether the defendant was prejudiced only after the plaintiff files a motion with the court showing good cause"). If the City paid Young $10,000 to settle a workers' compensation claim, but was unaware of the need to obtain a release of an undisclosed claim that he was fired solely for filing a workers' compensation claim, the City might have a colorable argument of prejudice.

court would have had no discretion but to grant summary judgment on one of those bases." *Middlebrook Tech, LLC v. Moore*, 157 Md. App. 40, 58 (2004) (citations omitted).

The trial court has discretion to defer or deny a motion for summary judgment in favor of a full hearing on the merits even when the facts are not in dispute and the technical requirements for summary judgment have been met. *See Housing Auth. of Baltimore City v. Woodland*, 438 Md. 415, 426 (2014) (citing *Metrop. Mortg. Fund, Inc. v. Basiliko*, 288 Md. 25, 28 (1980)); *Dashiell v. Meeks*, 396 Md. 149, 164 (2006); *Montgomery Cnty. Bd. of Educ. v. Horace Mann Ins. Co.*, 383 Md. 527, 536-37 (2004); *Mathis v. Hargrove*, 166 Md. App. 286, 306 (2005). Indeed, the court has discretion to deny a motion for summary judgment even if the factual issue is one that the court itself, rather than a jury, has the duty to decide. *See Woodland*, 438 Md. at 426-27.

In *Woodland*, for example, the defendant made a pretrial motion for summary judgment, citing the plaintiff's failure to comply with the notice provisions of the LGTCA. The plaintiff responded that she had shown good cause why the court should entertain the suit despite her noncompliance. The question of good cause is one for the court, not for the jury. *See Woodland*, 438 Md. at 430 ("a trial court may entertain the suit if *it* finds good cause for noncompliance") (emphasis added); *id.* at 431 ("[t]he trial court, exercising its discretion, found that Woodland had good cause for failing to comply fully with the notice requirement of the LGTCA"). Nonetheless, although the question was ultimately one for the circuit court itself to decide, the Court of Appeals held that the court did not err in denying

the motion for summary judgment to allow for the development of a fuller factual record. *Id.* at 426-27.

In this case, therefore, the circuit court would also have had the discretion to deny the City's motion. Accordingly, this is not a case in which the circuit court lacked the discretion to deny summary judgment on a ground besides the one on which it erroneously relied.[12]

As a final argument, the City contends that the judgment should be affirmed because Young "cannot show that he was fired solely for filing a workers' compensation claim." The City relies upon *Kern v. South Baltimore General Hospital*, 66 Md. App. 441 (1986). In that case, an employee brought a wrongful discharge action, asserting that the employer violated a clear mandate of public policy that no employee may be discharged solely for filing a claim under the Maryland Workers' Compensation Act. *Id.* at 444-47 (citing former Art. 101, § 39A of the Maryland Code). We held that the employer was entitled to summary judgment, because there was no dispute that the employee was discharged at least in part for excessive absenteeism during the period in which she was receiving workers' compensation benefits. *Kern*, 66 Md. App. at 448-49.

[12] To the extent that the City challenges the sufficiency of Young's pleadings, we note that a trial court also has discretion to grant a plaintiff leave to amend a defective complaint. *See Davis v. DiPino*, 337 Md. 642, 648 (1995) (citing Md. Rule 2-322(c)). To allege LGTCA notice, it is sufficient "'to aver *generally* that all conditions precedent have been performed or have occurred.'" *See Hansen*, 420 Md. at 684 (quoting Md. Rule 2-304(b)) (emphasis in *Hansen*).

Although the City included a similar argument in its written motion for summary judgment as to Young's initial complaint, the City never reasserted the motion in response to the amended complaint – even when it asserted other motions on the morning of trial. The City did mention *Kern* in its arguments before the circuit court, but only within the context of whether the LGTCA applied to Young's claim. The City did not ask the trial court to decide the question that the City now poses, nor did the trial court ever rule on the issue.

"Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ." Md. Rule 8-131(a). This Court has limited discretion to decide unpreserved issues in the interests of judicial economy, but only in rare cases. *See Bradley v. Bradley*, 208 Md. App. 249, 260 n.2 (2012) ("[t]his discretion is rarely exercised because it is preferred that there be a proper record with respect to the challenge, and that the parties and trial judge are given an opportunity to consider and respond to the challenge") (citations omitted); *Barber v. Catholic Health Initiatives, Inc.*, 180 Md. App. 409, 437 (2008) ("this discretionary power is one 'that appellate courts should rarely exercise'") (quoting *Chaney v. State*, 397 Md. 460, 468 (2007)); *Gittin v. Haught-Bingham*, 123 Md. App. 44, 51 (1998) (limited discretion to consider unpreserved issues "should be exercised only in extraordinary circumstances and within the bounds of fairness to both parties and to the court, not just to the party seeking the exercise of that discretion").

We therefore decline to address this unpreserved issue. *See USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138, 204 (2011), *aff'd*, 429 Md. 199 (2012) (declining to consider issue not raised in summary judgment motion and not ruled on in grant of summary judgment). The parties made no real factual or legal record on this issue, because the City did not pursue the issue in the circuit court. Although it is admittedly difficult to envision how Young could prove that he was discharged "solely" for filing a workers' compensation claim in light of the Civil Service Commission's decision to uphold his termination on grounds of dishonesty, it would be unfair to deprive Young of any opportunity to attempt to identify the existence of a factual dispute. The City will be free to advance this alternative ground for summary judgment on remand, along with any other arguments that it chooses to raise. *See Bednar v. Provident Bank of Maryland, Inc.*, 402 Md. 532, 543 (2007).[13]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.

[13] Subject to the restrictions of Md. Rule 2-331(a), the City may also amend its answer if it so chooses.