

Circuit Court for Baltimore City
Case No. 24-C-21-002679

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 610

September Term, 2024

STACEY JACKSON, *et al.*

v.

BALTIMORE GAS AND ELECTRIC CO.,
et al.

Friedman,
Tang,
Albright,

JJ.

Opinion by Albright, J.

Filed: October 7, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal stems from a lawsuit that was filed in the Circuit Court for Baltimore City against Baltimore Gas & Electric Company (“BGE”), Exelon Corporation (“Exelon”), and various other defendants (collectively, the “Appellees”). The lawsuit, which was brought by several current and former BGE employees (collectively, the “Plaintiffs”), alleged that Appellees had engaged in discriminatory employment practices.

During the pending litigation, it was revealed that the Plaintiffs’ attorney, Tonya Baña, had represented a former employee of Defendant Exelon, Stacey Jackson, in a separate employment-related legal matter and that, during the course of that representation, Ms. Jackson may have disclosed certain information to Ms. Baña that Appellees believed was privileged. Appellees subsequently moved to disqualify Ms. Baña and asked that the court hold an evidentiary hearing so that Ms. Jackson and Ms. Baña could testify about Ms. Jackson’s alleged disclosure of Appellees’ privileged information. Plaintiffs opposed the motion, and a hearing was scheduled. While the hearing was pending, Appellees had subpoenas issued for both Ms. Jackson and Ms. Baña. In response, Ms. Jackson and Ms. Baña each filed motions to quash their respective subpoenas and for a protective order, arguing, among other things, that any information Ms. Jackson may have disclosed to Ms. Baña was protected by attorney-client privilege and that, as a matter of law, the motions to quash should be granted. The court ultimately rejected Ms. Jackson’s and Ms. Baña’s arguments and ordered that an evidentiary hearing be held to investigate the matters in greater detail. Ms. Jackson and Ms. Baña (collectively “Appellants”) immediately indicated their intent to appeal the court’s

decision, and the court stayed the proceedings before holding the evidentiary hearing or issuing any further decisions on the pending matters.

In this appeal, Appellants present two questions¹ for our review:

1. Did the circuit court err or abuse its discretion in ordering an evidentiary hearing?
2. Did the circuit court err or abuse its discretion in denying Appellants’ motions to quash and for a protective order?

Finding no error or abuse of discretion, we affirm.

BACKGROUND

Ms. Jackson Employed at Exelon

In October 2019, Ms. Jackson was hired by Exelon as a claims case manager. The following year, Ms. Jackson became an employee relations advisor. During her tenure with Exelon, Ms. Jackson’s duties included conducting investigations into employment-related matters and preparing reports regarding those investigations. In February 2022, Ms. Jackson resigned.

¹ Ms. Baña phrased her questions as follows:

1. Whether the circuit court erred and abused its discretion in granting the request for an evidentiary hearing on the motion to disqualify;
2. Whether the circuit court erred and abused its discretion in denying the motion to quash and request for a protective order.

Ms. Jackson phrased her questions almost identically to Ms. Baña’s.

Underlying Complaint Filed

In April 2022, Ms. Baña filed, on behalf of Plaintiffs, the underlying lawsuit against Appellees. Plaintiffs alleged that Appellees had been engaging in racially discriminatory practices in their hiring, promotion, and training of employees.

Ms. Jackson Retains Ms. Baña

In August 2022, Ms. Jackson retained Ms. Baña to represent her in a separate matter related to her employment with Exelon. Ms. Jackson alleged that Exelon had discriminated against her by “treating [her] differently and less favorably than [her] white counterparts, retaliating against [her] for opposing its racially discriminatory employment practices, and creating a hostile work environment resulting in [her] constructive discharge.” After consulting and conferring with Ms. Jackson about her claims, Ms. Baña referred Ms. Jackson to another attorney, and, in February 2023, that attorney helped Ms. Jackson obtain a favorable settlement of her claims. It does not appear from the record that any formal legal action or court proceeding was initiated on behalf of Ms. Jackson regarding those claims.

Plaintiffs Amend Their Complaint

In August 2023, Plaintiffs amended their complaint. In that amended complaint, Plaintiffs included allegations concerning interactions that one of the Plaintiffs, Ajtiim Lee, had with Ms. Jackson while Ms. Jackson was working as an investigator for Exelon. Those interactions were purportedly related to discrimination-based complaints Lee had made to Ms. Jackson while Lee was employed at BGE.

Ms. Baña Deposes Ms. Jackson

In September 2023, Ms. Baña deposed Ms. Jackson in connection with the Plaintiffs’ lawsuit. At the outset of that deposition, Ms. Baña disclosed her and Ms. Jackson’s prior attorney-client relationship. Ms. Baña went on to question Ms. Jackson about her investigations into various discrimination-based complaints that were made by employees while Ms. Jackson was working as an investigator for Exelon. During that questioning, Ms. Jackson referenced several reports and conversations from when she was employed with Exelon. Appellees’ counsel lodged various objections throughout Ms. Jackson’s deposition testimony, arguing that Ms. Jackson could be disclosing Appellees’ confidential and/or privileged information.

Appellees Move to Disqualify Ms. Baña

In December 2023, Appellees moved to disqualify Ms. Baña as counsel for the Plaintiffs. Citing the references in the Plaintiffs’ amended complaint regarding Ms. Jackson’s activities as an investigator for Exelon and the comments made by Ms. Jackson during her deposition, Appellees alleged that Ms. Baña had obtained some of Appellees’ potentially confidential and/or privileged information from Ms. Jackson. Appellees argued that Ms. Baña’s conduct was a violation of the Maryland Rules of Professional Conduct, that the court should suppress any evidence “obtained through [Ms. Baña’s] improper *ex parte* communication with [Ms. Jackson],” and that the court should strike the portions of Plaintiffs’ amended complaint that referenced “wrongfully obtained information.” Appellees further argued that, in the event that the court did not “believe that the currently-developed record supports disqualification,” the court should hold an

evidentiary hearing at which Ms. Jackson and Ms. Baña should be required to testify about the scope of Ms. Jackson’s disclosure of privileged information to Ms. Baña.

Ms. Jackson and Ms. Baña Subpoenaed

After Plaintiffs filed a response in opposition to Appellees’ motion, a hearing was scheduled for April 15, 2024. In anticipation of that hearing, the court, at Appellees’ request, issued subpoenas for both Ms. Baña and Ms. Jackson. The subpoenas compelled Ms. Baña and Ms. Jackson to testify at the hearing and to produce, among other things, copies of any of Appellees’ confidential and/or privileged documents that were provided by Ms. Jackson to Ms. Baña.

Ms. Jackson and Ms. Baña Move to Quash the Subpoena and Request a Protective Order

A few days prior to the hearing, Ms. Jackson and Ms. Baña each filed a “Motion to Quash Subpoena *Duces Tecum* and for a Protective Order and Request for Attorneys’ Fees.” In their respective motions, Appellants argued that the court should quash the subpoenas and enter an appropriate protective order. Appellants argued that the subpoenas were unduly burdensome and sought documents that were irrelevant; that the subpoenas sought information that was confidential and included attorney-client privileged communications; and that the subpoenas were issued for an improper purpose.

Hearing

On April 15, 2024, the court heard argument on Appellees’ motion to disqualify and request for an evidentiary hearing and Appellants’ motions to quash and requests for a protective order. At the outset of that hearing, the court indicated that it would close the

courtroom and begin the proceedings by addressing the request for a protective order. Appellants responded by stating that “having oral argument on the Motion to Disqualify may clear the deck” regarding “some of the issues that are thornier with respect to the Motions to Quash.” Appellants went on to argue that Appellees had failed to meet their burden of proof in establishing that any of the documents or information relayed by Ms. Jackson to Ms. Baña was privileged.

Appellees responded by noting that they had prepared a privilege log that outlined the material they believed was privileged. Appellees also noted that, during her deposition, Ms. Jackson admitted that at least one of the reports she had discussed, a “cultural assessment” report, was privileged. When the court asked Appellants if they were conceding that some of the documents were privileged, Appellants responded that the cultural assessment “may qualify for work-product protection.” Appellants continued by stating that, regardless, “any privilege has been waived by virtue of the [Appellees’] assertion of the *Faragher-Ellerth* defense.”²

Following those arguments, the court declared that it was not convinced by Appellants’ argument “that this is a question of law and should be decided as a question of law.” The court explained that it was inclined to grant “a conditional and limited

² The “*Faragher-Ellerth* defense” is an affirmative defense that protects employers from liability in discrimination actions if the employer exercised reasonable care to prevent the discrimination and the offending employee failed to take advantage of those corrective measures. *E.E.O.C. v. Outback Steakhouse of FL, Inc.*, 251 F.R.D. 603, 611 (D. Colo. 2008). An employer that asserts this defense may waive the protection of privileges that might otherwise apply to the employer’s investigations and remedial efforts in response to discrimination complaints. *Id.*

protection of the requested documents” and to grant “a limited closure of courtroom for the purposes of examining the issue of whether . . . the material in question in subject to privilege and exclusion[.]” The court found that properly assessing Ms. Jackson’s “role with regard to privileged or non-privileged material” required “some factual airing and cannot be decided as a matter of law based on the pleadings.” The court declared that, once the material at issue was disclosed, if the court then made a factual or legal finding with respect to that material, the court would reconsider “the protective status of this issue.”

The court then took a brief recess and, upon continuing the proceedings, stated that “we are now at the conditional and limited closure portion of this hearing” and that the court would begin by addressing the motions to quash. In so doing, the court noted that, based on Appellants’ pleadings, it appeared that they were arguing that the “privilege issue” was “of a legal nature and [did] not require or necessitate an evidentiary hearing.” The court added that it was “not going to [make a ruling as a matter of law]” because, as the court had previously indicated, an evidentiary hearing was warranted.

At that point, Appellants indicated that they were inclined to stop the proceedings and note an appeal of the court’s decision. Appellants argued that, according to Appellees, the primary issue at the evidentiary hearing was the nature of Ms. Baña’s and Ms. Jackson’s communications, which Appellants believed were protected by the attorney-client privilege. When the court noted that the dispute also concerned whether the material itself was privileged, Appellants argued that that was a “threshold issue that

could be resolved and may be dispositive prior to addressing the secondary issues with respect to the communications between [Ms. Baña and Ms. Jackson].” The court responded by indicating that it was “struggling” with that argument because “the determination of whether the material is privileged is part of the factual determination” and was “necessary in this case if it is a threshold issue with regard to the Motion to Disqualify.”

Ultimately, Appellants declared that, in light of the court’s denial of their motion to quash, they wanted to stop the proceedings so that they could file an immediate appeal. Based on that, the court stayed the action and ended the proceedings.

Following the hearing, the court entered separate orders denying each of Appellants’ motions to quash and for a protective order. This timely appeal followed. Additional facts will be supplied as needed below.

MOTION TO DISMISS

Appellees have moved to dismiss part of this appeal. Appellees argue that Appellants’ challenge to the court’s decision to hold an evidentiary hearing on Appellees’ motion to disqualify should be dismissed because that decision is not an appealable final judgment. Appellees argue, in the alternative, that Appellants waived any challenge to that decision by failing to object to the evidentiary hearing. Appellees do not contest, however, Appellants’ challenge to the court’s denial of the motions to quash and for a protective order, as Appellees concede that those decisions constitute final appealable orders.

We deny Appellees’ motion to dismiss. In filing their motions to quash and for a protective order, Appellants were seeking relief from having to give testimony and produce evidence concerning the information that Appellees were claiming was privileged. The court ultimately denied those motions and determined that an evidentiary hearing was needed to explore the information in question and to ascertain whether that information was in fact privileged. Thus, the court’s decision to hold the evidentiary hearing was part and parcel of its decision to deny Appellants’ motions to quash and for a protective order. And, as Appellees acknowledge, the court’s orders denying Appellants’ motions constituted final appealable orders. *See St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. 75, 88–91 (2024). Whether Appellants lodge a sufficient objection to the evidentiary hearing has no bearing on the appealability of the court’s decision. *See Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 416 (2016) (noting that lack of preservation is not grounds for dismissing an appeal). As such, Appellants’ challenge to the court’s decision to hold an evidentiary hearing is properly before this Court.

STANDARD OF REVIEW

Generally, we review a court’s denial of a motion to quash for abuse of discretion. *St. Luke Inst., Inc. v. Jones*, 242 Md. App. 617, 624 (2019), *aff’d sub nom., Saint Luke Inst., Inc. v. Jones*, 471 Md. 312 (2020). A court’s decision to grant or deny a motion for protective order is also reviewed for abuse of discretion. *Md.-Nat’l Cap. Park and Plan. Comm’n v. Mardirossian*, 184 Md. App. 207, 217 (2009). When, however, the court’s

ruling involves the interpretation and application of Maryland law, we apply a *de novo* standard of review. *Jones*, 242 Md. App. at 625. The court’s decision to hold a hearing on motion of a party is ordinarily reviewed for abuse of discretion. Md. Rule 2-311(f).

DISCUSSION

I. Evidentiary Hearing

Appellants’ first set of arguments concern the court’s decision to order an evidentiary hearing.³ As discussed in greater detail below, we find no merit to any of Appellants’ arguments, and we hold that the court did not err or abuse its discretion in ordering an evidentiary hearing.

Appellants contend that the court abused its discretion in granting the evidentiary hearing “without making appropriate factual findings to support its ruling.” Citing *Greenberg v. State*, 421 Md. 396 (2004), Appellants argue that the court was required to determine the existence of Appellees’ alleged privilege and the non-existence of their waiver of that privilege before ordering an evidentiary hearing on Ms. Jackson’s communications with Ms. Baña.

Appellees argue that Appellants’ reliance on *Greenberg* is misplaced and that the court did not make a determination regarding Appellees’ privilege because the court

³ Ms. Jackson and Ms. Baña have filed separate briefs. Although they both raise similar arguments, Ms. Baña has included several arguments in her brief that are not included in Ms. Jackson’s brief. For simplicity’s sake, and because the resolution of Ms. Baña’s additional arguments applies equally to both parties, we will refer to all arguments as having been made by “Appellants,” even though some of the arguments were raised solely by Ms. Baña.

believed that an evidentiary hearing was needed before that determination could be made. Appellees contend that, under the circumstances, the court did not abuse its discretion.

In *Greenberg*, a criminal defendant appealed his convictions on the grounds that the trial judge had erred in admitting into evidence, during the State’s case-in-chief, the testimony of the defendant’s former attorney, which the defendant had moved to exclude based on the attorney-client privilege. 421 Md. at 401. The defendant argued that the judge’s decision was erroneous because the judge had failed to conduct a preliminary inquiry regarding the circumstances of the attorney’s representation of the defendant and the specifics of the evidence that the State sought to uncover. *Id.* at 399.

The Supreme Court of Maryland ultimately agreed with the defendant and reversed his convictions. *Id.* at 414. In so doing, the Court noted that, when a party raises a claim of privilege, although a trial judge is not required to conduct an evidentiary hearing on that issue, the judge is required to make findings “to satisfy not only the existence, but the non-existence and waiver of the attorney-client privilege.” *Id.* at 409. The Court noted that, in the defendant’s case, although the judge had familiarized himself with the substance of the attorney’s testimony, the judge had otherwise failed to determine the nature and scope of the allegedly privileged communications and the extent of any waiver and had failed to explore with specificity the evidence the State sought to solicit from the defendant’s attorney. *Id.* at 410. The Court concluded that the judge’s mere review of the substance of the attorney’s testimony was insufficient and that the

judge’s “premature determination of waiver cannot be affirmed on this sparse record[.]”
Id. at 413–14.

Turning back to the instant case, we are not persuaded by Appellants’ reliance on *Greenberg*. First, at no point did our Supreme Court state, or even suggest, that a court was required to make the noted determinations regarding privilege *before* holding an evidentiary hearing. Rather, the court merely stated that an evidentiary hearing was not required in order for a court to make those determinations. Moreover, the Court made clear that the primary issue in that case was the judge’s failure to make the necessary inquiries into the attorney-client privilege. Here, the court was attempting to make those inquiries via the evidentiary hearing but was unable to do so because Appellants decided to pursue the instant appeal before the court could hold the hearing and, presumably, make the very findings that Appellants now claim are lacking. Given those circumstances, we cannot say that the court abused its discretion in ordering the evidentiary hearing.

Next, Appellants claim that the court’s decision to order the evidentiary hearing was erroneous because the communications at issue were protected by the attorney-client privilege. Appellants argue that they submitted documents “conclusively establishing that [Ms.] Jackson’s communications with [Ms.] Baña occurred in the context of a formal attorney-client relationship and that [Ms.] Jackson has invoked the privilege and does not consent to the disclosure of her privileged communications[.]” Appellants maintain that, once the attorney-client privilege has been properly invoked, there is a rebuttable

presumption that the communications are privileged. Appellants argue that Appellees did not present any evidence to overcome that presumption.

Appellees contend that the court did not abuse its discretion in ordering the evidentiary hearing despite Appellants’ claims of privilege. Appellees contend that the issue of privilege was in dispute and required further exploration. Appellees also contend that the purpose of the hearing was to examine more than just Appellants’ allegedly privileged communications.

“The Supreme Court has recognized the attorney-client privilege as ‘the oldest of the privileges for confidential communications known to the common law.’” *Newman v. State*, 384 Md. 285, 300–01 (2004) (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981)). “In Maryland, the privilege has been recognized as a rule of evidence that prevents the disclosure of confidential communication made by a client to his attorney for the purpose of obtaining legal advice.” *E.I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 414–15 (1998). The privilege is codified in section 9-108 of the Courts and Judicial Proceedings Article of the Maryland Code, which states that “[a] person may not be compelled to testify in violation of the attorney-client privilege.”

“The process by which privilege is determined is governed by Maryland Rule 5-104[.]” *Greenberg*, 421 Md. at 408. That rule states, in pertinent part, that “[p]reliminary questions concerning . . . the existence of privilege . . . shall be determined by the court[.]” Md. Rule 5-104(a). The rule further states that “[h]earings on preliminary matters shall be conducted out of the hearing of the jury when required by the rule or the

interests of justice.” Md. Rule 5-104(c). The Supreme Court of Maryland has interpreted the rule as “requir[ing] a preliminary determination, but not an evidentiary hearing.” *Greenberg*, 421 Md. at 408 (emphasis removed).

“Once the attorney-client privilege is invoked the trial court decides as a matter of law whether the requisite privilege relationship exists, and if it does, whether or not any such communication is privileged.” *E.I. du Pont de Nemours & Co.*, 351 Md. at 415 (cleaned up). “The party seeking the protection of the privilege bears the burden of establishing its existence.” *Id.* “Where a person asserting privilege has met his or her initial burden[,] that person may not be compelled to testify in violation of the attorney-client privilege, and this prohibition extends to bar the compelled production of privileged documents.” *100 Harborview Drive Condo. Council of Unit Owners v. Clark*, 224 Md. App. 13, 55–56 (2015) (cleaned up).

That said, the attorney-client privilege “is not impregnable and must be strictly construed to protect ‘only those attorney-client communications pertaining to legal assistance and made with the intention of confidentiality.’” *Greenberg*, 421 Md. at 403–04 (quoting *Newman*, 384 Md. at 302). The need for strict scrutiny is due, in part, to the fact that “[i]nvocation of the privilege can create evidentiary inequities between parties during discovery and the absence of fact and truth at trial.” *Parler & Wobbler v. Miles & Stockbridge*, 359 Md. 671, 691 (2000). As such, “[t]he privilege should be applied only when necessary to achieve its limited purpose of encouraging full and frank disclosure by

the client to his or her attorney.” *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 202 Md. App. 307, 363 (2011) (cleaned up).

Furthermore, “[a]lthough the court makes a legal determination about the existence of a protective privilege, it makes a factual determination with respect to satisfaction of the burden.” *100 Harborview Drive*, 224 Md. App. at 55 (cleaned up). Regarding that factual determination, we have noted that a party’s burden “cannot be met by conclusory allegations or mere assertions.” *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 703 (2013) (cleaned up). “A blanket assertion of the privilege is extremely disfavored and ordinarily the privilege must be raised as to each record so that the court can rule with specificity.” *CR-RSC Tower I*, 202 Md. App. at 363 (cleaned up).

Against that backdrop, we hold that the court did not err or abuse its discretion in ordering the evidentiary hearing. The purpose of the evidentiary hearing was to explore in more detail both parties’ claims of privilege and, presumably, to make a factual determination with respect to satisfaction of each party’s respective burdens. Although an evidentiary hearing is not required for the court to make that determination, there is nothing in the Maryland Rules or the relevant case law that prohibits such a hearing. To the contrary, that authority expressly recognizes that a court may, in certain circumstances, conduct an evidentiary hearing prior to making a preliminary determination regarding privilege. *E.g.*, Md. Rule 5-104(c) (“Hearings on preliminary matters shall be conducted out of the hearing of the jury when required by the rule or the interests of justice.”); *Greenberg*, 421 Md. at 407 (noting that, when the privilege is

invoked, a court should “hear testimony relative thereto out of the presence of the jury, looking at the surrounding facts and circumstances”) (cleaned up).

Moreover, Appellants’ privilege claim was just one of the issues that the court intended to address at the evidentiary hearing. The purpose of the hearing was to enable the court to investigate all privilege claims, including those raised by Appellees, in greater detail. Importantly, at no point did the court suggest that it was going to compel Appellants to disclose any communications that were protected by attorney-client privilege. Rather, it is evident that the court intended to handle any privileged or otherwise sensitive matters with appropriate discretion. Appellants appear to suggest that *any* inquiry into the specifics of supposedly privileged communications is inappropriate, but the relevant authority makes clear that some scrutiny of the communications at issue is permissible, if not mandatory. *See, e.g., Greenberg*, 421 Md. at 410–14 (holding that the trial court’s determination regarding privilege was erroneous, where the court “did not determine the nature and scope of [the] privileged communication” or “explore with specificity what testimony the State sought to solicit”); *E.I. du Pont de Nemours & Co.*, 351 Md. at 415–17 (explaining that, in determining whether a communication is privileged, courts should look at the nature and purpose of the communication, as only those communications that are confidential and related to professional advice are protected); *Diggs & Allen v. State*, 213 Md. App. 28, 76–77 (2013) (rejecting a defendant’s claim that a letter sent to his attorney was privileged, where the details of the communication revealed that the letter was not meant to be confidential).

As to Appellants’ claim that the privileged nature of the communications at issue was “conclusively established,” we are not persuaded. As noted, the existence of privilege is a determination made by the court, and that determination necessarily involves some factual inquiry by the court. Here, the court found that it was unable to conduct such a factual inquiry based solely on the party’s pleadings, and the court concluded that an evidentiary hearing was needed to more fully assess the parties’ individual claims. In short, the court rejected both parties’ mere assertions of privilege in favor of a more comprehensive investigation into those assertions. We see no error or abuse of discretion there.

We are likewise not persuaded by Appellants’ claim that Appellees failed to overcome the “rebuttable presumption” that the communications at issue were privileged. Appellants’ blanket assertion of privilege did not create any presumption in their favor. Again, whether a particular communication is privileged is a matter decided by the circuit court, and, in making that determination, the court may hold a hearing. Here, the court attempted to hold a hearing to presumably make a determination of privilege; however, that hearing and determination never occurred because Appellants requested a stay in the proceedings so that they could pursue this appeal. As such, no presumption of privilege was ever established, and, even if it were, Appellants were not given the opportunity to rebut that presumption.

Next, Appellants claim that the court erred and abused its discretion in ordering the evidentiary hearing because expanded *in camera* review was not appropriate under

the circumstances of this case. Appellants claim that Rule 5-104 and controlling precedent require any examination of Ms. Jackson or Ms. Baña to be conducted *in camera* by the court. Appellants also claim that Appellees failed to establish that further review was warranted, as Appellees “did not present any evidence or any legal authority showing that [Ms.] Jackson’s communications with [Ms.] Baña are not privileged or that privilege has been waived.”

Appellees contend that Appellants’ argument is premature because the court never issued any decision regarding *in camera* review. Appellees argue that, regardless, such review is permissible.

We hold that the court did not err or abuse its discretion. There is nothing in the record to indicate that the court had ordered any review, *in camera* or otherwise, of Appellants’ allegedly privileged communications. The court simply determined that it could not grant Appellants the relief they requested based solely on the pleadings and that it needed to conduct a more extensive inquiry of the parties’ claims before it could make a determination regarding privilege.⁴ Had such an inquiry occurred (by way of the evidentiary hearing), the court very well may have ordered further review of any privileged documents, which may have been appropriate. *See Maxima Corp. v. 6933 Arlington Dev. Ltd. P’ship*, 100 Md. App. 441, 457 (1994) (“An *in camera* inspection

⁴ Because the court in the instant case had not made a determination regarding the privileged nature of any of the communications at issue, Appellants’ reliance on *U.S. v. Zolin*, 491 U.S. 554 (1989) is misplaced. In that case, the communications were judicially determined to be privileged, and the opposing party sought to overcome that privilege by relying on the “crime-fraud” exception. *Zolin*, 491 U.S. at 563.

may be appropriate to inspect alleged confidential communications to determine whether the privilege applies.”). But, as noted, the court was never given the opportunity to make any of those determinations because Appellants opted to take this appeal.

Lastly, Appellants contend that the court erred in ordering the evidentiary hearing because Appellees failed to meet their burden of identifying an ethical rule that Ms. Baña violated. Appellants argue that, when a party moves to disqualify opposing counsel, the party must make certain showings, including identifying the specific rule that opposing counsel purportedly violated. Appellants contend that Appellees made no such showing.

Appellees argue that Appellants are improperly attempting to litigate the merits of Appellees’ motion to disqualify. Appellees contend that the current appeal is limited to the narrow issues concerning the court’s decision to grant the evidentiary hearing and deny Appellants’ motions to quash. Appellees note that the court never reached the merits of their motion to disqualify because Appellants opted to file an appeal.

We hold that the court did not err or abuse its discretion. As Appellees correctly point out, Appellants noted this appeal before the court could make any determination regarding Appellees motion to disqualify, including whether Appellees had properly identified a specific rule that Ms. Baña had violated. The court ordered the evidentiary hearing to further investigate Appellees’ privilege claim, which was the basis for their motion to disqualify. Presumably, the court had planned to address the merits of Appellees’ motion to disqualify during or following the evidentiary hearing, but the court never got the chance because Appellants opted to pursue this appeal.

II. Motions to Quash and for Protective Order

Appellants next claim that the court erred and abused its discretion in denying their motions to quash and for a protective order. Appellants argue that the court failed to discuss the requisite legal principles, failed to include any factual findings, and failed to provide an explanation for its ruling. Appellants also argue that the documents requested by Appellees were not discoverable because the documents were privileged, irrelevant, and/or unnecessary. Lastly, Appellants argue that Appellees served the subpoena for an improper purpose.

Appellees argue that the court’s decision should be affirmed. Appellees contend that the court applied the appropriate legal principles and provided a sound basis for its decision. Appellees further contend that the documents at issue were discoverable and that the subpoena was not issued for an improper purpose.

We hold that the court did not err or abuse its discretion. To begin with, the court did provide an explanation for its decision. Appellants argued below that the court should grant their motions based solely on the pleadings, and the court explained that such a ruling would be premature and that additional inquiry into the issues was warranted. The court was then precluded from making any pertinent factual findings regarding those issues because Appellants chose to file an appeal. That the court did not “discuss” the legal principles governing motions to quash is of no moment, as there is nothing in the record to suggest that the court misapplied the law. *See State v. Chaney*, 375 Md. 168, 181 (2003) (recognizing the “strong presumption” that trial judges know the law and apply it properly).

Second, the court never reached the issue of the “discoverability” of the documents at issue because Appellants declined the evidentiary hearing in favor of this appeal. Again, the court determined that granting Appellants’ motions based solely on the pleadings was inappropriate. The court then stated that it would address Appellants’ motion to quash in greater detail during or following the evidentiary hearing. As noted above, if Appellants believed that one or more of the discovery requests sought privileged information, the burden was theirs to carry, and the court gave them the opportunity to make the requisite showing at the evidentiary hearing. Likewise, if Appellants believed that one or more documents were not “discoverable,” they had the burden of establishing those facts, which they could have done at the evidentiary hearing. *See Forensic Advisors, Inc. v. Matrixx Initiatives, Inc.*, 170 Md. App. 520, 530 (2006) (“The person seeking a protective order has the burden of making a particular and specific demonstration of fact, as distinguished from general, conclusory statements, revealing some injustice, prejudice, or consequential harm that will result if protection is denied.”) (cleaned up).

Nor are we persuaded by Appellants’ claim that the subpoenas were issued for an improper purpose. Maryland Rule 2-510 states, in pertinent part, that a subpoena is required to compel a person to give testimony and produce documents at a court proceeding and that “a subpoena may not be used for any other purpose.” Md. Rule 2-510(a). Here, there is nothing in the record to suggest that Appellees used the subpoena for any purpose other than to compel Ms. Jackson and Ms. Baña to give testimony and

produce documents. Regardless, if Appellants believed that Appellees used the subpoena for some nefarious purpose, that issue should have been addressed at the hearing. *See* Md. Rule 2-510(a)(3) (noting that a court may issue sanctions “[i]f the court, on motion of a party or on its own initiative, *after affording the alleged violator an opportunity for a hearing*, finds that a person has used or attempted to use a subpoena . . . for a purpose other than one allowed under this Rule”) (emphasis added).

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANTS.**