Circuit Court for Frederick County
Case No. C-10-CV-18-000441

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 670

September Term, 2019

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KATHLEEN JEFFERSON ET AL.

v.

JAMES WOOD

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Graeff,
Wells,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: November 30, 2020

Kathleen and Neil Jefferson, appellants, filed a negligence action against their neighbor, James Wood, appellee, in the Circuit Court for Frederick County on May 25, 2018. After unsuccessfully seeking discovery responses, and after the Jeffersons failed to respond to an Order to Compel, Mr. Wood filed a Motion for Sanctions, seeking dismissal of the case or another order to compel the Jeffersons to produce the relevant discovery within five days of the circuit court's ruling on the Motion for Sanctions. At the April 22, 2019, sanctions hearing, the circuit court dismissed the Jeffersons' suit without prejudice. The Jeffersons filed a Motion for Reconsideration, which the circuit court denied.

On appeal, the Jeffersons present the following question for this Court's review, which we have rephrased slightly, as follows:

> Did the circuit court abuse its discretion when it granted appellee's Motion for Sanctions and dismissed the case without prejudice?

For the reasons set forth below, we answer that question in the affirmative, and therefore, we shall reverse the judgment of the circuit court.

## FACTUAL AND PROCEDURAL BACKGROUND[1]

On May 30, 2015, Mr. Wood asked Mr. Jefferson to assist him with the retrieval of an aluminum rowboat that was situated at the bottom of a rocky embankment. Mr. Wood and the Jeffersons were neighbors at the time of the occurrence. Although their properties

[1] Because this is an appeal from a case that was dismissed, the factual background is based on the parties' pleadings and exhibits, as well as arguments at the sanctions hearing that resulted in dismissal.

were considered "lakefront," their homes were located up a steep hill. Mr. Jefferson and Mr. Wood first attempted to remove the boat by hand, but that was unsuccessful.

Mr. Jefferson and Mr. Wood decided to bring the boat up the steep terrain using climbing rope, Mr. Wood's SUV, and a makeshift pully system. Mr. Wood tied the climbing rope to the trailer hitch of his SUV, and Mr. Jefferson tied the other end to the boat. Mr. Wood then wrapped the rope around the base of a large boulder, which Mr. Jefferson estimated weighed "thousands of pounds." Mr. Wood then asked Mrs. Jefferson, who was gardening in her front yard at the time, to watch the rope that was looped around the boulder. Mrs. Jefferson testified that the purpose of the boulder was to prevent the boat from falling down an adjacent retaining wall and onto another neighbor's property.

As Mr. Wood attempted to move the boat, the rope dislodged from the boulder, and it struck Mrs. Jefferson in her chest. The force of the rope catapulted Mrs. Jefferson into the air and sent her over the adjacent retaining wall. Mrs. Jefferson's body landed at the bottom of the retaining wall, and her head struck the rocks and asphalt at the bottom of the wall.[2]

The asphalt onto which Mrs. Jefferson landed was scorching. Mr. Jefferson estimated the temperature to be approximately 120 degrees Fahrenheit. Mr. Jefferson rushed over to Mrs. Jefferson and "saw a lot of blood on her head." Mrs. Jefferson, who was still conscious, asked Mr. Jefferson to help her off the asphalt, and Mr. Jefferson told

[2] Mr. Jefferson, during an interview, stated that appellee's use of climbing rope was a poor choice to pull the boat, and the tension in the rope contributed to Mrs. Jefferson's injuries.

Mr. Wood to "call 9-1-1." While waiting for emergency services to arrive, Mr. Jefferson, with the help of Mr. Wood, moved Mrs. Jefferson from the bottom of the retaining wall to a couch inside of the Jeffersons' home. Mr. Jefferson asked Mr. Wood if emergency services were on their way, and Mr. Wood advised him that he did not have his cell phone and had not called 9-1-1. Mr. Jefferson then called 9-1-1, and an ambulance arrived at his home approximately ten minutes later.

When the responding EMTs arrived, they determined that Mrs. Jefferson should be airlifted to the University of Maryland Medical System Shock Trauma in Baltimore, Maryland (Shock Trauma). The ambulance transported Mrs. Jefferson to a nearby elementary school, where a park police helicopter took her to Shock Trauma.

Due to concerns about potential brain swelling, Mrs. Jefferson was placed into a medically induced coma. She had surgery the next day to address the fractures in her thoracic and cervical spine; the doctors placed two titanium rods, along with eight screws, into her back. She had suffered a "closed head injury," with a large gash than ran along the back of her head from ear to ear, and she received approximately 100 sutures and staples in her back and head. Mrs. Jefferson remained at Shock Trauma for six days, and she was discharged on June 4, 2015.

Due to limitations placed upon her by her surgeons, Mrs. Jefferson required home services at the onset of her recovery process. A hospital bed was placed on the first floor of her home due to her inability to access her bedroom on the second floor. Home care

services terminated on July 15, 2015, and Mrs. Jefferson began the first of many postoperative follow-up appointments the following day.

Mrs. Jefferson, who was then employed as an executive coach, lost her job due to not achieving her 2018 goals. This failure was caused, in large part, due to her inability to travel while she was in the process of recovering.

The Jeffersons retained counsel to represent them in a lawsuit against Mr. Wood. On May 25, 2018, counsel filed suit, and on July 19, 2018, Mr. Wood was served.

On August 19, 2018, Mr. Wood filed his Answer. He also filed a counterclaim against Mr. Jefferson, alleging that Mr. Jefferson was contributorily negligent and liable to Mr. Wood for contribution or indemnification. Counsel for the Jeffersons contend on appeal that the counterclaim created a conflict of interest for the firm, and Mr. Jefferson had to retain private counsel to defend him against Mr. Wood's counterclaim.[3]

On October 15, 2018, Mr. Wood propounded discovery on the Jeffersons, specifically interrogatories and requests for production of documents. On December 4, 2018, when no response was received, counsel for Mr. Wood emailed counsel for the Jeffersons, requesting answers to interrogatories and production of documents "within the next few weeks."

On December 19, 2018, after receiving no response, counsel for Mr. Wood filed a Motion to Compel, requesting the circuit court to compel production of discovery within

[3] On December 17, 2018, Mr. Jefferson, through his defense counsel, Barry Diamond, answered Mr. Wood's counterclaim.

five business days of its ruling on the motion. On January 8, 2019, the circuit court granted Mr. Wood's unopposed Motion to Compel and ordered the Jeffersons to "serve complete and executed discovery responses and all information requested by [Mr. Wood's] Interrogatories and Requests for Production of Documents within five (5) business days." On January 15, 2018, when no discovery was provided, counsel for Mr. Wood filed a Motion for Sanctions, seeking either the dismissal of the case or another order compelling the Jeffersons to serve complete and executed discovery within five business days. Counsel also asked for attorney's fees as a sanction to be paid for failing "to comply with reasonable discovery requests."

On February 13, 2019, the circuit court set a hearing date of April 22, 2019, on the Motion for Sanctions. On February 25, 2019, the circuit court entered its Scheduling Order, providing that discovery be completed by July 3, 2019, and trial be set for October 1, 2019. Ten days before the sanctions hearing, counsel for the Jeffersons assigned to the case left the firm, and another attorney in the firm entered her appearance for the Jeffersons.

At the April 22, 2019, sanctions hearing, counsel for the Jeffersons stated that the person who was assigned to the case had left the firm due to personal hardships, and "the transition has been less than smooth." She asked that, if the court believed that sanctions were warranted, they be imposed against the firm and not the Jeffersons, "who had no knowledge that there was any delay, and that anything was not being taken care of in their case in the most appropriate manner, as they expected." Counsel argued that, although there had been delays, those delays were not intentional, the close of discovery was still

several months out, and there would be ample time to prepare for the trial set for October 1, 2019. Although counsel was not assigned to the case until the prior Friday, she had spent the weekend preparing responses to the discovery requests, and she had a flash drive to give opposing counsel that contained most of the executed discovery. She promised that she would produce the rest by the end of the week.[4] As such, counsel argued that the delays in discovery should not be considered as undue delay or prejudicial, and if sanctions were warranted, they should be directed at the firm, not the Jeffersons.

Counsel for Mr. Wood disagreed with opposing counsel's assertion that there was no prejudice, and he argued that "the rules of the courts of Maryland must have meaning." He stated that the trial would be complex and there would be "countless fact witnesses to depose." Although trial was set for October, and close of discovery was not until July, counsel maintained that he did "not have free days between now and October to suddenly take 13 months of discovery and cram it into four months." Counsel argued that, given the amount of discovery that needed to take place within the next four months, trial could not take place as scheduled in October, and the delay in producing discovery was prejudicial.

Counsel for the Jeffersons, in her rebuttal, argued that Mr. Wood's counsel could have noted depositions at any point in time since the start of the case up until the present. According to counsel for the Jeffersons, much of what was discoverable was already in Mr.

[4] Counsel for the Jeffersons stated that she had in her possession at the sanctions hearing the responses to requests for production of documents, unexecuted answers to interrogatories for Mrs. Jefferson, and part of Mr. Jefferson's answers to interrogatories, which would be finished within the week.

Wood's counsel's possession, and while answers to interrogatories would have assisted Mr. Wood's counsel, he could have noted depositions based on information already in his possession.

The circuit court, after hearing from counsel, issued an oral ruling, finding that dismissal was the appropriate sanction and granting an order of dismissal. In reaching this determination, the circuit court stated the following on the record:

> Honestly, the only reason that we're even having this hearing is for some reason one of the other judges set this in for a hearing, because quite honestly I would have ruled on paper and I would have dismissed this on paper.
>
> It's not just the discovery that has not been done, it's the orders of this Court. And if the order to compel wasn't enough, then there was the order for sanctions. And then there's a hearing notice on the motion for sanctions. And I honestly, and I accept that things happen, but I also accept that it's, there can be prejudice in the time delay for getting things done in an orderly fashion.
>
> I am going to grant the motion for sanctions. I do think this is, and I think this is probably the first time I've done it, in 20 years on the bench, I am going to grant the order of dismissal. I just don't really see that there is any other sanction that's appropriate under these circumstances. And I'll be signing that order.
>
> And again, I appreciate the difficulty that the firm is in, but looking at everything globally, I do think again this is the very rare case where dismissal is appropriate.

On May 8, 2019, the circuit court entered the order of dismissal on the docket and the case was dismissed without prejudice.

On May 17, 2019, the Jeffersons filed a Motion for Reconsideration. In their motion, the Jeffersons' counsel introduced additional information, including more

discussion regarding the departure of the original attorney assigned to the case, and a five-factor test that they argued the circuit court should have used to determine whether dismissal was an appropriate sanction. Additionally, on May 30, 2019, counsel for the Jeffersons supplemented their Motion to Reconsider, attaching sworn affidavits regarding discovery, a Notice of Service of Discovery to Mr. Wood, and formally serving Mr. Wood with executed discovery. They also provided their expert designation.

On June 3, 2019, the circuit court denied the Motion to Reconsider. On June 10, 2019, the Jeffersons noted their appeal to this Court.

Additional facts will be discussed as necessary in the discussion that follows.

## STANDARD OF REVIEW

We review a trial court's imposition of a particular discovery sanction under the abuse of discretion standard. *Cole v. State*, 378 Md. 42, 55 (2003) ("Discovery questions generally 'involve a very broad discretion that is to be exercised by the trial courts. Their determinations will be disturbed on appellate review only if there is an abuse of discretion.'") (quoting *North River Ins. Co. v. Mayor and City Council of Baltimore*, 343 Md. 34, 47 (1996)); *Valentine-Bowers v. Retina Group of Washington, P.C.*, 217 Md. App. 366, 378 (2014) ("Maryland Rule 2–433(a)(3) gives trial courts broad discretion to impose sanctions for discovery violations."). "There is an abuse of discretion where no reasonable person would take the view adopted by the [circuit] court, or when the court acts without reference to any guiding rules or principles." *Bord v. Baltimore County*, 220 Md. App. 529, 566 (2014) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312

(1997)). "[T]he record must reflect that the judge exercised discretion and did not simply apply some predetermined position." *Maddox v.* Stone, 174 Md. App. 489, 502 (2007).

## DISCUSSION

### I.

### Dismissal of the Case

The Jeffersons argue that the circuit court abused its discretion when it dismissed the case. They assert that (1) "the ruling [was] tantamount to an autocratic action as it is based on the predetermination of the trial judge that dismissal was the only appropriate remedy without considering any other appropriate and non-case ending sanction" and (2) the court's failure to apply the requisite factors set forth in *Taliaferro v. State*, 295 Md. 376, 390–91, *cert. denied*, 461 U.S. 948 (1983), and *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 725–26 (2002), constituted an abuse of discretion.

Mr. Wood contends that the court "properly exercised its discretion in imposing sanctions after appellants' repeated and unexcused violations of discovery rules and orders of the court." He asserts that the Jeffersons "showed a consistent pattern of noncompliance with the Maryland Rules and chose to completely ignore Order after Order issued by the trial court." Mr. Wood argues that, "[i]f stated consequences of the Rules are not enforced when those rules are ignored, there is no sense having Rules at all."

In assessing the contentions in this case, we begin with a discussion of *Hossainkhail*. That case, similar to this one, involved the dismissal of a case as a sanction for the failure to provide discovery responses. *Id.* at 722–23. In *Hossainkhail*, the circuit court issued a

scheduling order on August 22, 2000, "mandating that all discovery be completed thirty days prior to the pre-trial conference set for December 15, 2000." *Id.* at 722. After the plaintiff failed to respond to the defendants' discovery requests, the defendants filed a motion to compel. *Id.* One month later, plaintiff's counsel responded to the motion, stating that he had been unable to locate the plaintiff. *Id.* The circuit court granted the motion to compel and ordered the plaintiff to produce discovery within 30 days. *Id.* The plaintiff failed to provide discovery in compliance with the circuit court's order, and the circuit court dismissed the case. *Id.* at 723.

On appeal, this Court rejected the argument that the circuit court erred in dismissing the case because the court failed to exercise its discretion. *Id.* at 724–25. We concluded that "[t]he record clearly illustrate[d] an exercise of judicial discretion," noting that

> [t]he [circuit] court specifically found that (1) liability of the parties was in dispute; (2) appellant was at fault for the delay; (3) appellant's excuse was insufficient; and (4) the deadline for discovery expired in November, 2000. The court denied the motion for reconsideration after hearing and considering arguments from all counsel, reviewing the case file, and weighing the equities.

*Id.* at 725.

We also rejected the argument that the circuit court abused its discretion in dismissing the case. *Id.* We explained that there are five factors that a trial court should employ in determining the imposition of sanctions:

> (1) whether the disclosure violation was technical or substantial; (2) the timing of the ultimate disclosure; (3) the reason, if any, for the violation; (4) the degree of prejudice to the parties respectively offering and opposing the evidence; and (5) whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.

*Id.* at 725–26. *Accord Taliaferro*, 295 Md. at 390–91. The Court noted that "[t]he factors often overlap and do not lend themselves to a compartmental analysis." *Hossainkhail*, 143 Md. App. at 726. After applying the various factors to the facts then before it, the Court held that the circuit court had not abused its discretion when it dismissed the case. *Id.*

Here, in assessing the propriety of the court's decision, we will proceed on the assumption that the court did exercise its discretion in deciding that the appropriate sanction under the circumstances of the case was dismissal. *See Hossainkhail*, 143 Md. App. at 725 (The court is not required to discuss each factor it considers in balancing the requisite factors.). Nevertheless, as explained, we conclude that the court abused its discretion in imposing the sanction of dismissal.

With respect to the first factor, whether the disclosure violation was technical or substantial, we conclude, as we did in *Hossainkhail*, that the plaintiffs' "disregard of discovery deadlines was a substantial violation." *Id*. at 726. The remaining violations, however, weigh against the extreme sanction of dismissal.

Addressing the second factor, the timing of the ultimate disclosure, the Jeffersons argue that "the responses to the written discovery requests were made well within the timeline allowing for discovery." They assert that, upon learning of the sanctions hearing, "substantial compliance was able to be achieved in a matter of days." Because the close of discovery was still several months away, and because the Jeffersons had completed most of the discovery prior to their case being dismissed at the April 22, 2019, sanctions hearing, we conclude that the second factor weighs against the sanction of dismissal.

With respect to the third factor, the reason for delay, the firm's failure to comply due to personnel problems, weighs in favor of a sanction for the discovery violation. It certainly would warrant the imposition of attorney's fees, as counsel acknowledged. It does not, however, weigh in favor of the extreme sanction of dismissal, particularly when the Jeffersons appeared to play no role in the delay.

Addressing the fourth factor, the degree of prejudice, the Jeffersons contend that there was no prejudice because the discovery deadline was almost three months away, and that trial was set for more than five months later. Moreover, they assert that Mr. Wood's insurance company was in possession of the Jeffersons' recorded statement, medical bills, and other documents evidencing loss, so they were able to proceed with their investigation while waiting for discovery.

We addressed a similar argument in *Hossainkhail*, where the plaintiff argued that the delay was not prejudicial because the defendants had "copies of medical bills, records, and police reports prior to the filing of the case . . . and that liability was not really in dispute." *Id.* at 726–27. In finding that the delay was prejudicial, the Court explained that "[t]he fact that [defendants] obtained some relevant bills, records, and reports informally, independent of their discovery requests, does not diminish the need for discovery" because, "[w]ithout discovery from [plaintiff], [defendants] did not know whether their information was complete or accurate." *Id.* at 727. Likewise, the Jeffersons' argument that there was no prejudice on the ground that Mr. Wood possessed many of the responsive documents

fails. Although Mr. Wood was in possession of some discoverable material, this did not obviate the need for discovery, especially given that liability was at issue.

Nevertheless, the Jeffersons came to the sanctions hearing with most of the discovery and a plan to move the case forward, and as indicated, the case was still in the early stages and both the close of discovery and the trial date were months away at the time of the sanctions hearing. And pursuant to the fifth factor, the ability to cure prejudice through postponement, that was a reasonable option if necessary. We agree with the Jeffersons that, if Mr. Wood was prejudiced by the delay, "continuance was desirable as dismissal would unduly prejudice [them] and prevent them from being able to continue to prosecute their claims since the statute of limitations had run." This is especially true given that the delay was due to personal problems of the attorney, and through no fault of the Jeffersons. *See Hart v. Miller*, 65 Md. App. 620, 628 (1985) ("In view of the status of the case at the time of the Motions Hearing, together with the lack of wrongful conduct on the part of appellant Hart, and the realization that the statute of limitations had run on this course of action," the circuit court abused its discretion by dismissing the case.), *cert. denied*, 305 Md. 621 (1986). *Accord Station Maintenance Solutions, Inc. v. Two Farms, Inc.*, 209 Md. App. 464, 480-81 (2013) ("[C]ase-ending sanctions 'should be reserved for egregious violations of the [circuit] court's scheduling order, and should be supported by evidence of willful or contemptuous or otherwise opprobrious behavior on the part of the party or counsel.'") (quoting *Maddox v. Stone*, 174 Md. App. 489, 507 (2007)).

Weighing all of the factors, we conclude that the circuit court abused its discretion in granting a dismissal of the case as a sanction. We will reverse and remand for the court to consider and impose an appropriate sanction other than dismissal.

**JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANTS.**