

Circuit Court for Allegany County  
Case No: C-01-CV-19-00513

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 705

September Term, 2020

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GEORGE SHAWN LANE

v.

JEFF NINES, *et al.*

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Fader, C.J.,  
Leahy,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 19, 2021

\*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.

Gregory Shawn Lane, appellant, challenges an order entered by the Circuit Court for Allegany County vacating an order of default entered against the appellees. For the reasons that follow, we shall affirm.

#### **BACKGROUND**

Mr. Lane is an inmate at the North Branch Correctional Institute (“NBCI”) in Cumberland, Maryland. Mr. Lane submitted a Public Information Act Request (“PIA Request”) to the warden of NBCI, appellee, with six requests for documents. In his requests, Mr. Lane sought, generally, communications between the clergy and personnel of NBCI and the Western Correctional Institution “pertaining to the end of Ramadan on June 3rd, 2019, the sighting of the Moon, and/or Eid al—Fitr Prayer for Islamic faith groups.”

In its first response to the PIA Request, dated October 24, 2019, the Department of Public Safety and Correctional Services, appellee, denied four of Mr. Lane’s six requests pursuant to § 4-204(c)(4)(i) of the General Provisions Article on the grounds that the requests would require the custodian of records to “create, compile, or program a new public record.” In response, Mr. Lane filed a complaint in the Circuit Court for Allegany County which 1) challenged the four “wrongful” denials of his PIA Request, 2) sought “injunctive relief” such that the warden be required to provide “copies or printouts of the denied records,” and 3) sought actual and statutory damages “for the willful and knowing violation of the PIA provisions.”

Though the appellees were properly served on January 2, 2020, the warden and NBCI failed to file a timely answer to the complaint. Mr. Lane, therefore, moved for the

entry of an order of default. On March 26, 2020, the circuit court entered an Order of Default as requested. A Notice of Default Order was issued on the same date, advising the warden and NBCI that it may move to vacate the Order of Default within 30 days. The notice specified that any motion to vacate “state the reasons for the failure to plead, as well as the legal and factual basis for the defense to the claim.” No such response was received within 30 days and, on April 30, 2020, Mr. Lane moved for the entry of a default judgment.

Months passed, and on July 7, 2020, the appellees filed an untimely motion to vacate the default order, stating that “[d]ue to an oversight, clerical error, [they] failed to file an Answer or responsive pleading,” that they had a “meritorious argument,” and that a motion for summary judgment was being filed contemporaneously. The motion for summary judgment asserted that, following its initial denial letter, the Department conducted an additional search “and did not find any records responsive” to three of the requests at issue. The Department argued that the warden had no obligation to “produce records which did not exist.” Further, as to the fourth request, Mr. Lane was provided with the two responsive documents in the Department’s possession.

On July 10, 2020, the circuit court entered an order, granting the motion to vacate. On July 20, 2020, the court received Mr. Lane’s “Opposition to Defendant’s Motion to Vacate Order of Default.” On August 6, 2020, Mr. Lane filed a “Motion to Rescind,” contending that the court’s order vacating the default was premature as it did not provide Mr. Lane with the full 15-day response time pursuant to Maryland Rule 2-311(b). Mr. Lane advised the court that he had filed an opposition and asserted that the court should provide him “an additional 12 days...to file a supplement to his Opposition.” On August

26, 2020, the court denied Mr. Lane’s motion to rescind after “having fairly considered the reasons stated by [Mr. Lane] in his [m]otion.” On the same day, the Court denied Mr. Lane’s motion for entry of default judgment and the warden’s motion for summary judgment. The matter was ultimately heard on the merits on September 4, 2020 and judgment was entered in favor of the warden and the Department.

Mr. Lane noted a timely appeal and raises the following questions for this Court’s consideration:

1. Did the court abuse its discretion and violate appellant’s right to respond and request a hearing pursuant to Maryland Rule § 2-311(b), before ruling on appellee’s motion to vacate, thereby prejudicing appellant?
2. Did the court abuse its discretion, by vacating the order of default, when appellee’s motion to vacate, did not meet any of the three requirements of Maryland Rule § 2-613(d), for a proper informed decision?

We review a circuit court’s decision to rule on a motion prior to the expiration of the fifteen-day window prescribed by Maryland Rule 2-311(b) for an abuse of discretion. *See Miller v. Mathias*, 428 Md. 419, 445-46 (2012). As to Mr. Lane’s first claim of error, we agree that pursuant to Maryland Rule 2-311(b), his response to the Motion to Vacate was not yet due at the time of the court’s ruling.<sup>1</sup> It was, therefore, improper for the court to consider and rule on the motion prior to the receipt of Mr. Lane’s response.

However, “appellate courts of this State will not reverse a lower court judgment for harmless error: the complaining party must show *prejudice* as well as *error*.” *Sumpter v.*

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<sup>1</sup> We disagree, however, with his contention that he was denied the ability to request a hearing. In the opposition Mr. Lane filed with the court, he did not request a hearing pursuant to Maryland Rule 2-311(f). Had the court waited and considered Mr. Lane’s timely filed opposition, he would not have been entitled to a hearing as none was requested.

*Sumpter*, 436 Md. 74, 82 (2013) (italics in original). As to prejudice, Mr. Lane contends that he was prejudiced by the premature ruling “because he was denied the opportunity to point out to the court...the deficiencies in the [a]ppellee’s Motion to Vacate that were required to grant the motion under Rule 2-613(d).” He further contends that, had the court considered his arguments, it would have been required to deny the motion and proceed to ruling on the motion for default.

However, the potential for any such prejudice was remedied by Mr. Lane’s filing and the court’s consideration of the Motion to Rescind which alerted the court of its error with respect to the response time and notified the court that a timely opposition had been filed. As a result, the court, in reconsidering its order to vacate the default judgment, was on notice of Mr. Lane’s opposition and the arguments raised therein. Nonetheless, the court elected to “leave the July 10 Order in place.” We are satisfied that Mr. Lane was not prejudiced in the manner contended because the court had the opportunity to review and consider Mr. Lane’s opposition.

With respect to Mr. Lane’s second claim of error, we find that the circuit court did not abuse its discretion in vacating the order of default. Mr. Lane argues that it was an abuse of the court’s discretion to consider a motion to vacate filed 30 days after the order of default had been entered. Indeed, pursuant to Maryland Rule 2-613(d), following the entry of an order of default, “[a] defendant may move to vacate the order of default within 30 days after its entry.” However, “trial courts have broad discretion to determine whether to grant or deny a motion to vacate an order of default.” *Att’y Grievance Comm’n v. Alston*, 428 Md. 650, 673 (2012). While it may have been reasonable for the court to deny the

motion to vacate for its untimeliness, the court was not required to deny the motion for that reason because “an order of default is interlocutory in nature and can be revised by the court at any time up until the point a final judgment is entered.” *Bliss v. Wiatrowski*, 125 Md. App. 258, 265 (1999). So, despite the untimeliness of the Motion to Vacate, it was, nonetheless, received prior to the entry of the default judgment which permitted the court to exercise its broad discretion and consider the submission.

As we have previously noted, “Maryland courts ordinarily exercise their discretion in favor of a defaulting party if the party establishes that there is a meritorious defense and shows that its fault was excusable.” *Holly Hall Publications, Inc. v. Cty. Banking & Tr. Co.*, 147 Md. App. 251, 263 (2002). Mr. Lane contends that the motion to vacate failed to “state the reasons for the failure to plead and the legal and factual basis for the defense to the claim” as required by Maryland Rule 2-613(d). While the warden’s assertion that it failed to file a timely responsive pleading “[d]ue to an oversight, clerical error,” was scant on detail, it did comply, on its face, with the requirement to state a reason for the failure to plead. Again, the court was permitted to exercise its discretion in determining whether this reason was sufficient, especially in light of any meritorious defenses that might be raised by the warden and the Department.

Based upon our review of the record, it was reasonable for the circuit court to find that the appellees had raised a meritorious defense and to set aside the order of default. The Motion to Vacate, filed by the appellees, directed the court to a contemporaneously filed motion for summary judgment in which they asserted that the available documents had been provided to Mr. Lane pursuant to his PIA Request and that the matter was moot.

To the extent that the circuit court was satisfied that the information at issue had been released to Mr. Lane, it was reasonable for the court to determine that the order of default was contrary to an equitable resolution of the underlying dispute. For the foregoing reasons, it was not an abuse of court’s discretion to vacate the order of default.

**JUDGMENT OF THE CIRCUIT  
COURT FOR ALLEGANY COUNTY  
AFFIRMED. COSTS TO BE PAID  
BY APPELLANT.**