Circuit Court for Prince George's County
Case No. CAL17-06422

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

No. 749, September Term 2019

No. 1737, September Term, 2019

SPARTAN BUSINESS & TECHNOLOGY SERVICES, INC., et al.

LORENZO DOWNING, et al.

v.

IOU CENTRAL, INC.

Berger,
Wells,
Salmon, James P.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, J.

Filed: August 3, 2020

Appellee, IOU Central ("IOU"), filed a breach of contract action in the Circuit Court of Prince George's County, claiming that appellants, Spartan Business ("Spartan") and Lorenzo Downing, materially breached the terms of the parties' settlement agreement. According to the terms of the contract, in the case of default, IOU reserved the right to request that the case be re-set on the court's docket and to enter a consent judgment. Under these terms, IOU filed the consent judgment, which Spartan and Downing moved to vacate. The circuit court found in favor of IOU and ordered that Spartan and Downing pay $38,888.00 to IOU. It is from this judgment that Spartan and Downing appeal and ask the following questions:

I. Whether Spartan's Motion for Protective Order and to Quash was improperly denied without explanation, legal support or substantive analysis where the subpoena was overbroad and sought information not reasonably calculated to lead to admissible evidence.

II. Whether the Circuit Court improperly ordered Spartan be held in contempt where no evidence of contempt was presented, where Spartan complied with all of its statutory obligations and orders of the court, and where the Circuit Court's Order for Contempt provides no explanation, legal support or substantive analysis.

III. Whether the Circuit Court denied Lorenzo Downing's Motion to Stay Circuit Court Proceedings without providing any legally substantive reason or memorandum.

IV. Whether the Circuit Court improperly ordered Downing to pay Appellee's attorney's fees related to the filings and responses to the Motion to Stay without providing any legally substantive reason or memorandum.

Because the appellants have failed to submit material parts of the record, they have failed to adequately provide this Court with the documentation needed to come to a fair

and just resolution of the issues presented. We therefore exercise our discretion and dismiss this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

On April 6, 2016, Lorenzo Downing, in his capacity as President and Chief Executive Officer of Spartan Business, signed a promissory note with IOU Central, a lender of small business loans, for a total loan amount of $100,000.00 to be repaid via electronic funds transfer from Spartan's and Downing's bank account. **[Docket Entries, Plaintiff's Motion for Summary Judgment]** Downing also personally guaranteed the loan with a separate personal guaranty. **[Id]**

By September 2016, there were 26 occurrences of insufficient funds in the bank account, accruing $650 in additional fees. **[Id.]** At that point, IOU sent the case to a collection agency. **[Id.]** Then, on February 6, 2017, IOU, through counsel, sent demand letters to Spartan and Downing. Without adequate response from either, on March 16, 2017 IOU filed suit against Downing and Spartan in the Circuit Court of Prince George's County for breach of contract, quantum meruit, and unjust enrichment. **[Id.]**

However, on June 30, 2017, the parties agreed to settle and jointly filed a voluntary dismissal. **[Docket Entry #28]** Under the terms of the settlement agreement, dated June 2, 2017, Spartan and Downing "jointly, severally and collectively" agreed to repay IOU in monthly installments of $4,000.00 until the balance of the loan was repaid in full. **[Docket Entry #34, "Settlement Agreement and Mutual Release"]** The parties also agreed, "[i]n

the event of default, IOU Financial[1] reserves the right to request that the case be re-set and to enter the Consent to Judgment, crediting Defendants with any amounts paid." **[Docket Entry #34, "Settlement Agreement and Mutual Release" paragraph 1]** The settlement agreement further specified that any disputes arising out of the agreement were to be governed by Maryland law "in the courts for Prince George's County, Maryland." **[Docket Entry #35, paragraph 4]** Spartan and Downing timely made the first two payments for the months of June and July to IOU's counsel pursuant to the agreement. **[Id.]** However, Spartan and Downing made late payments for the months of August, September, November, and December 2017. **[Id.]** Spartan and Downing ceased making payments altogether beginning January 2018. **[Id.]**

Because of Spartan's and Downing's default, on January 18, 2018, IOU moved to re-open the case and enter the consent to judgment in the Circuit Court for Prince George's County. **[Docket Entry #31]** Neither Downing nor Spartan filed a response. Consequently, the circuit court granted IOU's uncontested motion on March 19, 2018 and entered judgment against Spartan and Downing in the principal amount of $81,063.70 and $21,812.74 in attorney's fees, plus post judgment interest to accrue from the date of entry of the judgment. **[Docket Entry #40]**

IOU was unaware that Spartan began bankruptcy proceedings on January 4, 2018. Once this fact was discovered, on March 23, 2018, IOU moved to vacate the judgment, but only as to Spartan (granted on April 26, 2018). **[Docket Entry #42, 44]** IOU subsequently

[1] The parties, in the Settlement Agreement, refer to IOU Central, Inc. as "IOU Financial."

served Downing, as the judgment-debtor, with copies of Interrogatories in Aid of Execution and First Request for Production of Documents in Aid of Execution. **[Docket Entry #43]**

On May 3, 2018, Downing filed a motion to vacate the consent judgment, and an amendment on June 7, 2018, arguing that the Circuit Court for Prince George's County (or any court in the State of Maryland) did not have subject matter or personal jurisdiction over the matter. Relying on the terms of the promissory note, Downing contended that IOU initiated the consent judgment proceedings in bad faith, knowing that, under the promissory note, any and all claims or disputes between the parties were to be settled by arbitration in Kennesaw, Georgia. **[Docket Entry #47, #50]** Downing also argued that IOU improperly initiated the action in light of the automatic stay stemming from Spartan's bankruptcy proceedings. **[Docket Entry #47 page 6]** Despite Downing's contention, he nonetheless sent answers to IOU's interrogatories, which IOU received on May 7, 2018. But, on May 24, 2018, IOU filed a pleading titled, "Motion to Compel Answers to Interrogatories in Aid of Execution and Request for Production of Documents in Aid of Execution," in which IOU argued that Downing's answers to the interrogatories were not substantive or were completely unresponsive. **[Docket Entry #49]** On July 5, 2018, Downing moved to stay discovery and filed a response to IOU's motion to compel. **[Docket Entry #53]** The court subsequently ordered Downing provide answers to IOU's interrogatories no later than August 9, 2018, which Downing failed to provide, and scheduled a hearing on the parties' remaining motions for September 14, 2018. **[Docket Entry #61, #67, #79]**

After numerous failed attempts to reschedule or postpone the September hearing **[Docket Entry #72, #80, #82]**, Downing failed to appear. **[Docket Entry #101]** As a result, the circuit court dismissed Downing's (amended) Motion to Vacate the Consent Judgment and to Dismiss [IOU]'s Complaint with Prejudice and denied his Motion to Stay Discovery. **[Id.]** With the consent judgment still in place, IOU requested the circuit court issue a writ of garnishment both on wages and on property other than wages against Downing and schedule a hearing on the matter. **[Docket Entry #101-109]** Downing filed an answer and objection to the writs of garnishment, which the circuit court denied on November 29, 2018 without a hearing. **[Docket Entry #121, #138]**

In a separate action, on March 11, 2019, Downing and IOU voluntarily entered into an agreement which granted IOU relief from an automatic stay in the United States Bankruptcy Court for the Eastern District of Virginia, thereby beginning the process of garnishing Downing's wages from Spartan to satisfy the outstanding debt to IOU. **[Docket Entry #144, exhibit 3]** Three days later, on March 14, 2019, IOU made a second request for a hearing regarding the writs of garnishment in the circuit court. A hearing was scheduled for June 20, 2019. IOU subsequently issued a subpoena to Spartan requesting Spartan's testimony at the June 20 hearing and its production of

> [a]ll documents referring to or related to any payment or wages, or property other than wages, to or for the benefit of Lorenzo Downing, from or on behalf of Spartan [], including all W-2's, 1099's, tax documents, contracts or agreements referencing wages or other compensation, stock, stock retirement contributions, the payment of reimbursement or fringe benefits, and payments related to 6419 Cobbs Road, Alexandria, Virginia, 22301, or its occupants, including Joyce Downing.

[Docket Entry #153-155] In response, on May 31, 2019, Spartan filed a motion for protective order and to quash the subpoena issued by IOU, arguing that the request was "overly broad for many reasons, the largest of which" being that IOU "had no relief from stay with which to collect any wages until March 11, 2019." **[Docket Entry # 154-155]** Spartan also contested the subpoena's request for information relating to "Joyce Downing," arguing that Downing had both a wife and a sister named "Joyce Downing," neither of whom had ever been employed by Spartan. **[Docket Entry #156]** Downing also filed, in his personal capacity, a motion to quash a subpoena issued by IOU on June 11, 2019, which reiterated the arguments Spartan raised in its May 31 motion. **[Docket Entry #170]**

While the docket entries in the record indicate that the June 20 motions hearing occurred, the record is otherwise devoid of any hearing transcripts. All that the record contains is a docket entry indicating that "[a]ll pending matters [were] argued;" Spartan's motion for a protective order and to quash IOU's subpoena was denied; Downing's motion to quash IOU's subpoena was denied; the court ordered "Downing to answer all pending writs on or before [June 24, 2019;]" and the court ordered "garnishee [Spartan] withhold all payments to Defendant Lorenzo Downing until the Court order[ed] otherwise." **[Docket Entry #182]**

The record also shows that on June 21, the day after the hearing, the circuit court scheduled a follow-up hearing for July 9, 2019. **[Docket Entry # 175]** Once again, the record does not contain transcripts from this supplemental hearing, but merely contains the docket entry from that day. Those docket entries indicate that Joyce Downing's affidavit was filed; Spartan and Downing filed a motion titled "Motion to Reconsider, alter or

amend, and/or to revise the 'June Order' to grant Spartan's motion to Quash and grant Spartan's motion for Protective order or, in the alternative, motion to stay execution of the 'June Order' and continue hearing until the Court of Special Appeals renders its decision"; a further hearing was held; a witness/exhibit list was filed; the court found Spartan to be in contempt; and that the court ordered Spartan and Downing to pay to IOU $38,888.00 by July 16, 2019. **[Docket Entry # 207]** The court's order of contempt, however, does tell us that it found Spartan to be in contempt after hearing the sworn testimony of Deatrice Gross, Chief Operations Officer of Spartan, and determining that there was "no justifiable reason for Spartan's . . . failure to withhold wages due to [Lorenzo Downing]," thereby ordering Spartan to "remit such wages to [IOU], in compliance with the Writs and with Maryland law[.]" **[Docket Entry #208]** It is from the disposition of the July 9 hearing that Spartan and Downing appeal to this Court.

DISCUSSION

Although they seemingly make several distinct claims, Downing and Spartan actually present one overarching claim of error: the circuit court failed to provide any explanation, legal support, or substantive analysis when issuing its rulings. Downing and Spartan base their claims solely on the text of the circuit court's orders, which simply state that Downing's and Spartan's motion for protective order was denied and that the court found both to be in contempt for failing to properly follow discovery rules. We do not agree because neither Downing nor Spartan have provided us with an adequate basis with which to make a decision.

On appeal, an appellant carries the burden of establishing the errors of a lower court. *Wooddy v. Mudd*, 258 Md. 234, 237 (1970). Reversal is not warranted unless the appellant can affirmatively demonstrate that prejudicial error occurred below. *Id.* Both Downing and Spartan, therefore, carry the burden of "put[ting] before this Court every part of the proceedings below, which were material to a decision in [its] favor." *Lynch v. R.E. Tull & Sons, Inc.*, 251 Md. 260, 262 (1968).

Maryland Rule 8-413(a) requires the record on appeal to "include (1) a certified copy of the docket entries in the lower court, (2) the transcript required by Rule 8-411, and (3) all original papers filed in the action in the lower court except . . . those other items that the parties stipulate may be omitted." Rule 8-411(a), which governs the ordering and filing of court transcripts, obligates the appellant to order a transcript containing:

> (1) a transcription of (A) all the testimony or (B) that part of the testimony that the parties agree . . . is necessary for the appeal, or (C) that part of the testimony ordered by the Court pursuant to Rule 8-206(c) or directed by the lower court in an order;
> (2) a transcription of any proceeding relevant to the appeal that was recorded pursuant to Rule 16-502(b); and
> (3) if relevant to the appeal and in the absence of a written stipulation by all parties to the contents of the recording, a transcription of any audio or audiovisual recording or portion thereof offered or used at a hearing or trial.

If a party, sometimes, but not always, the appellant, fails to comply with Rule 8-413, then Rule 8-602(a), (c) gives this Court discretion, either by motion or on its own initiative, to dismiss the case.[2]

[2] (a) **On Motion or Court's Initiative.** The court may dismiss an appeal pursuant to this Rule on motion or on the court's own initiative.

***

As for the record extract, Rule 8-501(a) instructs us that, "[u]nless otherwise ordered . . . the appellant shall prepare and file a record extract . . . in every civil case in the Court of Special Appeals." Subsection (c) of that same Rule dictates the contents of said extract:

> **(c) Contents.** The record extract shall contain all parts of the record that are *reasonably necessary* for the determination of the questions presented by the appeal and any cross-appeal. It shall include the circuit court docket entries, the judgment appealed from, and such other parts of the record as are designated by the parties pursuant to section (d) of this Rule. [. . .]

(emphasis supplied). If the record extract fails to comply with the rules set forth, Rule 8-501(m) dictates:

> **(m) Sanctions for Noncompliance.** Ordinarily, an appeal will not be dismissed for failure to file a record extract in compliance with this Rule. If a record extract . . . on its face fails to comply with this Rule, the appellate court may direct the filing of a proper record extract within a specified time and, subject to Rule 8-607, may require a non-complying attorney or unrepresented party to advance all or part of the cost of printing the extract. The appellate court may dismiss the appeal for non-compliance with an order entered under this section.

In most instances, a party's noncompliance with these rules may be cured before any serious prejudice or injustice have taken place. *See, e.g.*, *McAllister v. McAllister*, 218 Md. App. 386, 397-99 (2014) (denying appellee's motion to dismiss when appellant supplied material omitted from the record in the appendix to her brief, thereby "eliminat[ing] any prejudice" to the appellee); *Skeens v. Paterno*, 60 Md. App. 48, n. 1 (1984) (declining to dismiss an appeal when appellee "remedied much of the harm" caused by appellant, who committed "various violations of the Md. Rules," by supplying omitted

---

(c) **When Discretionary.** The court may dismiss an appeal if:
(4) the contents of the record do not comply with Rule 8-413[.]

portions of the record in his brief), *disapproved of on other grounds*, *Fairbanks v. McCarter*, 330 Md. 39 (1993). While "dismissal of an appeal for an appellant's violation of the rules is 'a drastic corrective measure,'" *Steamfitters Local Union No. 602 v. Erie Ins. Exch.*, 241 Md. App. 94, 111 (2019) (internal citations omitted), *cert. granted*, 466 Md. 193 (2019), Maryland appellate courts have used their discretion to refuse to consider issues on appeal or to outright dismiss [entire] appeals as a sanction for failure to comply with these rules. In *White v. State*, this Court held that an appellant's failure to provide hearing transcripts precluded the Court from considering one of the appellant's contentions when the argument relied on what transpired at the hearing on his motion for a change of venue. 8 Md. App. 51, 53-54 (1969), ("It is, however, the responsibility of the appellant to include []in the record a transcript of all the testimony[] . . . as well as all other matters and issues which he desires this Court to review on appeal.") *cert. denied*, 257 Md. 737 (1970). We again refused to consider an appellant's argument in *Van Meter v. State*, namely, that the lower court erred in overruling a suggestion for removal, when the appellant failed to provide the transcript of the voir dire examination and jury selection in the record. 30 Md. App. 406, 410 (1976). "The burden to provide such transcript is also appellant's if he intends to rely thereon. . . . Thus, in the absence of any jury selection testimony in the transcript, he may not argue for reversal based thereon." *Id*; *accord Whack v. State*, 94 Md. App. 107, 126-27 (1992).

We extended this reasoning in *Rogers v. Baker*, 77 Md. App. 199 (1988) where we outright dismissed appellant's appeal for his failure to provide substantial portions of the record. There, the appellant appealed the circuit court's grant of appellee's motion to

dismiss a negligence action. *Id.* at 200. On appeal, the appellant's record extract included only an index and docket entries, which "establish[ed] nothing more than that a suit was filed by appellant against appellee;" that the "appellee was served with process[;]" that the "appellee filed a motion to dismiss and appellant responded; that the court granted the motion to dismiss, with prejudice . . . ; and [that] an appeal was filed." *Id.* at 200-201. By contrast, the appellee included an appendix of his own to supplement that of the appellant's, containing a complete record of the proceedings of the first case and the pleadings from the second case, which formed the basis of the appeal. *Id.* at 202-203, 205. Neither appendix, though, contained the opinion of the lower court or any record of the hearing, despite this responsibility resting squarely with the appellant. *Id.* at 205 ("It was appellant's responsibility to preserve these matters.") (citing *Langrall, Muir, & Nopp'r v. Gladding*, 282 Md. 397 (1978); *Brown v. Prince George's County*, 47 Md. App. 717 (1981)).

"Ordinarily, when the appellee provides the necessary parts of the record in an appendix to his own brief, and is not prejudiced by appellant's omission, the Court, in the exercise of its discretion, may decline to dismiss the appeal." *Id.* at 204 (internal citations omitted). However, "[w]here the violations are numerous and serious, and not accidental, however, the case may be one which should 'serve as an example rather than as a warning,' and may be dismissed even where the appellee has supplied the necessary material." *Id.* (citing *Bornstein v. State Tax Comm.*, 227 Md. 331, 336 (1962); *Kemp-Pontiac-Cadillac v. S&M Constr.*, 33 Md. App. 516 (1976)). We concluded that the extract deficiencies "[could] hardly be viewed as accidental," and even the appellee's supplemental appendix "[did] not contain the basis for the trial court's decision, *without which we are seriously*

handicapped in attempting to determine whether it erred." 77 Md. App. at 205-206 (emphasis supplied). Even if the *Rogers* court attempted to answer the appellant's sole question, there was "nothing in the record before [the Court] to indicate which or how many of those grounds [appellee argued in his motion to dismiss] were relied upon by the trial judge." *Id.* at 206. "We cannot say, from this record, whether the trial judge committed reversible error. *It is the obligation of appellant to provide an extract containing all parts of the record* ***material*** *to our consideration*." *Id.* at 207 (emphasis supplied).

Moving to this appeal, although Spartan and Downing supplied this Court with a marginally more comprehensive record extract than that in *Rogers*, the extract still fails to provide us with the most important pieces of this appeal: the motions hearing transcripts. The entirety of Spartan's and Downing's argument is that the circuit court failed to provide *any* reasoning or legal analysis in its decision to deny their motion to quash and to hold them in contempt. They simply ask us to rely on the written order of the court, which contains, as they admit, no legal support or reasoning. However, based on the docket entries provided, we know that a hearing was held on both motions. Spartan and Downing do not argue that these hearings were not recorded or that the transcripts from them could not be made available. But, remarkably, neither appellant provided the hearing transcripts.

Further complicating matters, unlike the appellee in *Rogers*, IOU did not submit a brief, let alone provide documentation to supplement the record, such as the hearing transcripts or excerpts therefrom. We recognize that, unless otherwise agreed upon, an appellee is under no responsibility to provide the record extract, let alone documentation to support an appellant's case, particularly where the appellant has failed to provide it. We

highlight this fact, though, simply to emphasize this Court's inability to know what transpired during the hearings. It is not this Court's responsibility to cobble together a record when the burden lies squarely with an appellant to establish error below. *ACandS, Inc. v. Asner*, 344 Md. 155, 192 (1996) ("[T]he appellate court has no duty independently to search through the record for error.").

Given that the record extract and the record that was transmitted to this Court do not contain the hearing transcripts, "we have no idea" whether the judge, in denying the Motion for Protective Order and to Quash and holding the appellants in contempt, as Spartan and Downing assert, failed to use any legal reasoning in so ordering. *Campbell v. State*, 235 Md. App. 335, 339 (2017). Although *Campbell* considered an appellant's failure to include in the record extract the proceedings leading up to the circuit court's grant of a summary judgment motion, we find Judge Moylan's analysis to be on point nonetheless:

> At this point in the procedural process, we hit our first, if not indeed an insurmountable, speed bump. We have no idea whether Judge Nance, in granting summary judgment, was right or wrong. We do not know what the basis the State had for requesting Summary Judgment. We do not know what the basis Judge Nance had for granting Summary Judgment. The appellant has not provided a copy of the State's motion, as he should have. If the appellant opposed the motion, we are told nothing in that regard. If there was an argument on the motion, we are told nothing in that regard. The record on this issue is a total blank. In short, the appellant has not provided us with any information on which we could base a reasoned decision.
>
> The result, therefore, is easy. If we do not know the State's basis for asking for Summary Judgment, and do not know why Judge Nance decided as he did, we will simply presume that he did the right thing for the right reason. It is not the State's burden to persuade us that Judge Nance did the right thing. It is the appellant's burden to persuade us that Judge Nance did the wrong thing. This the appellant has not done. The nothing-to-nothing tie goes to the status quo.

Id. Based on this cogent reasoning, we can go no further in our own analysis of appellants' claims. As Spartan and Downing have not provided us with a record on which we can make a decision, these appeals are dismissed.

APPEAL DISMISSED. APPELANTS TO SHARE THE COSTS EQUALLY.