Circuit Court for Frederick County
Case No. 10-C-14-3353

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 786

September Term, 2016

JACK ZHANG

v.

SAI WANG

Nazarian,
Reed,
Krauser, Peter B.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Krauser, J.

Filed: June 19, 2018

*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.

Jack Zhang, appellant, and the companies for whom he served as either the Chief Executive Officer or "Managing Member"—namely, CaerVision Corp.; Transcontinental Technologies, LLC; and CaerVision Technology Center, Inc. (the "corporate co-defendants")—were named as defendants in a lawsuit, filed by Sai Wang, appellee, in the Circuit Court for Frederick County, alleging breach of contract, fraudulent conveyance, and conversion.[1] At the conclusion of that suit, default judgments were entered against appellant and his corporate co-defendants.

The judgment of default entered against appellant, which prompted this appeal, was entered because of his failure to, among other things, appear for his deposition, the pre-trial conference, and his trial, without any explanation or even notice. Challenging that judgment, appellant contends that the circuit court, in so doing, "violate[d] his right of due process," and further erred in denying his "Motion to Alter or Amend the Default Judgment and to Set Aside" and "Motion to Set Aside Money Judgment and Related Relief."

Wang responds, in her brief, by, first, moving to dismiss this appeal "for [appellant's] extensive failures to comply with this [C]ourt's Orders and Rules, including filing his brief out of time without leave of Court and failing to prepare and file the Record Extract." As for the merits of appellant's claims, she asserts that the circuit court did not violate appellant's right to due process and that he has "waive[d] his arguments" as to his motions to alter or amend and to set aside, having failed to make those arguments below.

[1] In her complaint, Wang alleged that all four defendants were liable for breach of contract and fraudulent conveyance but then confined her claim of conversion to only appellant.

For the reasons that follow, we agree with Wang that this appeal should be dismissed for appellant's repeated and flagrant violations of this Court's orders and rules.

BACKGROUND

Proceedings Below

According to the complaint she filed in this matter, Wang, a foreign national, entered into a contract with CaerVision Technology Center, Inc., under which she would "provide" Transcontinental Technologies, LLC, "with $560,000.00, in exchange for" CaerVision Corp. and CaerVision Technology Center, Inc., "taking the steps necessary to file Form I-526, Immigrant Petition By Alien Entrepreneur, with the United States Department of Homeland Security's U.S. Citizenship and Immigration Services and take the necessary steps to qualify [her] as an EB-5 investor and obtain for her an EB-5 visa."

When, according to Wang, appellant and his corporate co-defendants failed to take such "steps," Wang brought an action, alleging breach of contract, fraudulent conveyance, and conversion, and seeking the return of the $560,000 she had paid, as well as punitive damages, in the Frederick County circuit court. Appellant was subsequently served with Wang's complaint, according to the Frederick County Sheriff's Office "Return of Paper Service," at his "business address" in Frederick, Maryland, as were his corporate co-defendants.

Eleven months later, in October 2015, the circuit court held a motions hearing. Appellant appeared at that hearing with his counsel, Jason W. Shoemaker, Esquire, who

was also representing appellant's corporate co-defendants in this matter.[2] At that hearing, the court ordered that all depositions were to be held during the four-day period from January 12 through January 15, 2016, scheduled a pre-trial conference for March 18, 2016, and set this matter in for trial on April 12, 2016.

But then, on January 12, 2016, Mr. Shoemaker sent an email and a "five-day letter," as required by Maryland Rule 2-132(b),[3] to appellant at his West Palm Beach, Florida address, informing appellant that he would be terminating his representation of appellant, as a conflict of interest had arisen between appellant and his corporate co-defendants, which required that appellant obtain separate counsel. The conflict purportedly arose when appellant's corporate co-defendants began to suspect that he, in his executive capacity, had committed fraud as to the contract at issue in Wang's suit. Mr. Shoemaker's subsequent motion to strike his appearance as to appellant was granted, but Shoemaker remained, in the case, as counsel for the corporate co-defendants.

That same month, appellant failed to appear for his deposition, even though he had been present when the court had ordered that all depositions, including his, were to be held during the four-day period from January 12 through January 15, 2016. Then, on

[2] Wang, in her brief, represents that appellant himself was present, and appellant does not challenge that representation.

[3] Maryland Rule 2-132(b) requires, among other things, that an attorney's motion to withdraw be accompanied by "the moving attorney's certificate that notice has been mailed to the client at least five days prior to the filing of the motion, informing the client of the attorney's intention to move for withdrawal and advising the client to have another attorney enter an appearance . . . ."

January 20, 2016, the circuit court clerk sent a "notice to employ new counsel" to appellant's Frederick, Maryland address, which was returned marked "return to sender not deliverable as addressed." The next day, the circuit court denied, what was then Wang's third "motion to compel discovery responses and for immediate sanctions against all defendants" that she had filed the previous December. The copy of that order was then sent, by the circuit court's clerk, to appellant's Frederick, Maryland address. It was later returned to the clerk's office marked "undeliverable."

The next month, Wang requested that appellant be found in contempt for his failure to attend his January 2016 deposition, and that sanctions, which had been imposed the previous September and then vacated the next month, be re-imposed on him for the same failure to appear. Although Wang mailed that motion to appellant's Florida address, it was returned to Wang's counsel marked "refused." In sum, at this point, mail sent by both court and counsel to appellant's Frederick, Maryland address, and his West Palm Beach, Florida address, had been returned, marked either "undeliverable" or "refused."

A pre-trial conference was then held on March 18, 2016. Present at that conference were Wang's counsel and appellant's former counsel, Mr. Shoemaker (who was still representing appellant's corporate co-defendants), but not appellant, even though the date had been set, with appellant present, the previous October. There, Wang's counsel re-informed the court of appellant's failure to appear for his January deposition.

Moreover, at that conference, appellant's corporate co-defendants moved to postpone trial, to reopen discovery, and for leave to file a cross-claim against appellant.

Then, a few days later, Wang filed an opposition to those motions, and sent a copy of that opposition to appellant's West Palm Beach, Florida address. Although mail to that address had been previously returned to Wang's counsel marked "refused," this time that did not occur, as it was apparently accepted by appellant.

Then, on April 1, 2016, a "status conference" was held before the circuit court, with all parties, except appellant, present. At that conference, appellant's former counsel stated that appellant "has not in any fashion responded to any of these [papers] in opposition and was not here . . . at the last court date[,]" presumably referring to the pre-trial conference, held two weeks earlier, on March 18, 2016. And, Wang's counsel further advised the court: "I don't know where [appellant] is. He may go overseas. Last I knew his service address was Florida." At the conclusion of the status conference, the court found appellant in default, noting that "[h]e has never complied with the discovery requirements. He has not appeared. He has not responded to the [Wang's] motion for contempt. I think," continued the court, "the proper sanction for his non-cooperation is to declare him in default in this case and [Wang] can proceed ex parte against" appellant.

Five days later, on April 6, 2016, a notice of the court's default order was mailed by the clerk of the circuit court to appellant's Florida address. Then, on April 12, 2016, the circuit court proceeded with the trial of this matter, as scheduled. Appellant did not appear for that trial, although the date of trial had been set, with appellant present, the previous October. At the conclusion of that proceeding, the court entered a default judgment against appellant in the amount of $560,000.

Six days later, on April 18, 2016, the court issued a written order, granting judgment in favor of Wang and awarding, to Wang, "ex parte damages . . . in the amount of $560,000." The notice of that order was sent to appellant at his Florida address. Interestingly enough, that same day, appellant filed a Motion to Alter or Amend and to Set Aside Order of Default. In that motion, he claimed that he had not received notice of the "hearings for April 6, 2016 and thereafter," even though no hearing had been scheduled for or held on that date.[4]

On April 26, 2016, appellant filed a Motion to Set Aside Money Judgment and Related Relief, which incorporated, by reference, his April 18th motion. The next month, the court denied both his Motion to Alter or Amend and to Set Aside Order of Default and his Motion to Set Aside Money Judgment and Related Relief, whereupon appellant noted this appeal.

Appellate Proceedings

After appellant, on June 16, 2016, filed this appeal, this Court ordered that his brief be filed no later than October 17, 2016. Almost four months later, and, only ten days before his brief was due, appellant, on October 7, 2016, moved for an extension of time to file his brief, and, while that motion was still pending, appellant failed to file his brief by its due date. Then, nine days after the deadline for filing his brief had expired, this Court

[4] As to appellant's reference to an "April 6, 2016" hearing, we assume that appellant was referring to trial held on April 12, 2016. In any event, he was present, in October, when that date for trial was set.

nonetheless granted his motion for an extension and informed appellant that his brief would now be due on December 17, 2016.

Notwithstanding that two-month extension, appellant once again failed to submit his brief when due. Finally, on December 19, 2016, he filed his brief. But it was submitted without an explanation as to why he had failed to comply with either of his deadlines. Moreover, although he filed a brief, he did not file a record extract, in violation of Rule 8-501(a) and (c),[5] or a table of contents for a record extract, in violation of Rule 8-501(h).[6] Furthermore, the formatting of the transcript references in his brief were in violation of Rule 8-503(b).[7]

Consequently, this Court mailed appellant a deficiency letter, informing him that, among other violations of the rules, he had failed to file a record extract or provide a table of contents to a record extract, and that the transcript references in his brief were improperly formatted. The letter requested that he file corrected copies of his brief and a record extract

[5] Rule 8-501(a) requires that "[u]nless otherwise ordered . . . the appellant shall prepare and file a record extract . . . in every civil case in the Court of Special Appeals[,]" while Rule 8-501(c) states, among other things, that "[t]he 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."

[6] Pursuant to Rule 8-501(h), if a record extract, "produced" either "as an appendix to a brief" or as a "separate volume," it must include a "table of contents."

[7] Under Rule 8-503(b), "[r]eferences [] to the record extract, regardless of whether the record extract is included as an attachment to the appellant's brief or filed as a separate volume, shall be indicated as (E ....)."

by February 6, 2017. It further informed him that, if he failed to do so, his "brief may be stricken by this Court and the appeal dismissed," pursuant to Rule 8-503(h).[8]

Nonetheless, appellant failed to meet the foregoing deadline. No corrected brief or record extracts were received by this Court on or before February 6, 2017. And, no extension was requested by appellant. Finally, appellant delivered to this Court, on February 13, 2017, what he designated as a "supplemental brief," with, for the first time, a record extract. But that occurred after Wang had timely filed her brief on January 18, 2017. Moreover, the brief appellant filed did not respond to the motion to dismiss contained in Wang's brief. In fact, to this day, appellant has never filed an opposition to that motion.

After the filing of that "supplemental brief," appellant obtained new counsel, who attempted, during oral argument before this Court, to introduce evidence that would show, counsel claimed, that appellant did arrive, though late, to his January 2016 deposition. But counsel then conceded that there was no evidence in the record that appellant had ever appeared at that deposition, and this Court, in any event, declined to consider such evidence, as it was not introduced below.

[8] Under Maryland Rule 8-503(h), "[f]or noncompliance with this Rule, the appellate court may dismiss the appeal or make any other appropriate order with respect to the case, including an order that an improperly prepared brief be reproduced at the expense of the attorney for the party for whom the brief was filed."

Motion to Dismiss

Wang, in her brief, moved to dismiss this appeal "for [appellant's] extensive failures to comply with this court's Orders and Rules, including filing his brief out of time without leave of Court and failing to prepare and file the Record Extract[,]" and that motion, as noted, remains unopposed.

"The Maryland Rules are not guides to the practice of law but precise rubrics established to promote the orderly and efficient administration of justice and . . . are to be read and followed." *Rollins v. Capital Plaza Associates, L.P.*, 181 Md. App. 188, 197 (2008) (quotations omitted). And, specifically, under Maryland Rule 8-602(a), this Court, "[o]n motion or on its own initiative, . . . may dismiss an appeal" when "a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502"[9] or when "the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with," among other rules, Rule 8-501.[10] Although "dismissing an appeal on the basis of an appellant's violations of the rules of appellate procedure is considered a drastic corrective measure" as "reaching a decision on the merits of a case is always a preferred alternative," *Rollins v. Capital Plaza Associates, L.P.*, 181 Md. App. 188, 202 (2008) (quotations omitted), where there are "substantial violations of

[9] Under Maryland Rule 8-502, an appellant must file his or her brief "[n]o later than the date specified in the notice sent by the appellate clerk . . . [,]" which, here, was originally October 17, 2016.

[10] Maryland Rule 8-501 provides, among other things, that an appellant, in a civil case, must file a record extract in the Court of Special Appeals.

the appellate rules of procedure that have clearly caused needless difficulty," *id.* at 203, dismissal may be warranted, which is precisely what occurred and, consequently, this appeal warrants dismissal.

To begin with, appellant did not simply miss one deadline for filing his brief. He missed three. While this Court did grant him an extension, as to his first failure to meet his brief's filing deadline, he never sought an extension for his failures to file his brief that followed. Moreover, while he eventually did file a brief, it, as previously noted, contained improperly formatted transcript references, in violation of Rule 8-503(b), and no table of contents for a record extract, in violation of Rule 8-501(h). But, most importantly, it was not accompanied by a record extract, in violation of Rule 8-501(a) and (c).

When this Court then requested a corrected brief and a record extract be filed, and, in effect, granted appellant, once again, an additional two months to do so, he once more ignored the deadline imposed by this Court and filed his brief and record extract late, even though this Court had warned him that, if he did so, his appeal might be dismissed. Even more problematic, the record extract was filed after Wang had submitted her brief, leaving her no opportunity to respond. Moreover, appellant, according to Wang, failed to contact her in order to, under Rule 8-501(d), "agree on the parts of the record to be included in the record extract[,]" and appellant does not claim that he did so.

Furthermore, appellant has never offered any consistent or credible explanation for his successive failures to timely file his brief and record extract.[11] Consequently, his repeatedly late filings clearly warrants dismissal of the appeal, which, to this date, appellant does not dispute, having filed no opposition to Wang's motion to dismiss. However, although we grant Wang's motion to dismiss, we deny her request for the costs of producing her own appendix.

Finally, although we are dismissing this appeal, we feel impelled to note that appellant's contentions clearly lack any merit whatsoever. His first contention—that the court's judgment below "violated his right to due process"—finds no support in the record. Appellant not only repeatedly failed to appear for proceedings scheduled in his presence, specifically, his January deposition, the March pre-trial conference, and the April trial, but he failed to accept mail at either the Frederick, Maryland address, or the West Palm Beach, Florida address. Moreover, he never provided the court with a service address, following Mr. Shoemaker's withdrawal, until after judgment was entered against him. As he concedes in his brief, "it would customarily be incumbent upon a pro-se party to keep the court apprised of his current address." Indeed, this Court has stated that a "litigant has a continuing obligation to furnish the court with his most recent address." *Das v. Das*, 133 Md. App. 1, 20 (2000) (quotation and brackets omitted). But here, the record shows that appellant repeatedly failed to do so.

[11] In his October 2016 motion for an extension, the only motion for an extension that he filed, appellant stated, among other things, that he "has not been able to afford counsel since he has lost his position in December, 2016."

And, as to the second issue he raises—that the court erred in denying his Motions to Alter or Amend the Default Judgment and to Set it Aside because "the record," he argues, "contains no evidence that [Wang] had paid [him] in any way and that any written agreement was not formed or in [his] individual capacity"—that argument was not preserved for appeal because he did not make it below.

APPEAL DISMISSED. APPELLEE'S MOTION FOR COSTS OF PRODUCING HER APPENDIX DENIED. OTHER COSTS TO BE PAID BY APPELLANT.