

Circuit Court for Baltimore County
Case No. C-03-CV-21-002335

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1092

September Term, 2021

JAMIE BENNETT, ET AL

v.

KATHERINE GRACE PORTER, ET AL

Leahy,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: June 3, 2022

*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.

This is an interlocutory appeal from an order denying a motion to proceed under pseudonym in the Circuit Court for Baltimore County. Appellants,¹ Jamie Bennett and John Fitch, filed a lawsuit in their individual capacities and as the “next friend” of their daughter, A.B.² The lawsuit made claims for breach of contract, breach of fiduciary duty, intentional misrepresentation, negligent misrepresentation, fraud in the inducement, action for monies had and received, and detrimental reliance against appellee, St. Paul’s School for Girls (“SPSG”).³ The claims included a request for damages related to pain and suffering. Approximately one month after filing their complaint, appellants filed a motion to proceed under pseudonym, asking that their daughter be identified as “A.B.” in all litigation. SPSG opposed, and the court ultimately denied the motion. Appellants timely appealed and present one question for our review, which we have rephrased for clarity:

1. Whether the court abused its discretion in denying appellant’s motion to proceed under pseudonym.⁴

¹ We refer to Jamie Bennett and John Fitch as appellants for the purpose of this appeal. This should not be construed to mean that we do not believe A.B. is a party in the underlying case, *see infra*, rather that regardless of whether or not A.B. is a party, Bennett and Fitch are the parties appealing the order of the court below.

² At the time of the incidents alleged in the lawsuit, A.B. was a minor. At the time of the filing of this lawsuit, A.B. is a legal adult.

³ In their complaint, appellants also named Christy Ferrens, Katherine Porter, Sarah Porter, Brett Porter, Greta Heck, Judy Heck, Kent Heck, Niya Robinson, Kelley Robinson, Norbert Robinson, Bra’el Taylor, and Mary Burrell. After the court denied the motion to proceed under pseudonym, but before this Court heard this appeal, the trial court granted the motions to dismiss all the defendants except for SPSG.

⁴ In their brief, the appellants phrased the question as follows: “Whether an individual who is not the real party in interest in a lawsuit based upon a contract entered by her

For reasons set forth below, we remand to the Circuit Court for Baltimore County for further proceedings.

BACKGROUND

Our discussion of the background of this case focuses on facts relevant to the issue presented rather than the merits of the case below.

Appellants first enrolled their daughter, A.B., in St. Paul’s School for Girls, a private Episcopal day school for girls located in Brooklandville, MD, for the 2017-2018 academic year. Appellants allege that beginning in the fall of 2019 A.B. was bullied by several of her classmates, and when notified of this behavior in January of 2020, the school failed to take any action to remedy the situation. Appellants argued that this failure to act was a breach of the enrollment contract that all parties signed each academic year. On July 20, 2021, as individuals and as the “next friend” of A.B, appellants filed this lawsuit. Prior to the filing of this lawsuit, A.B. reached the age of majority.

On August 17, 2021, appellants filed a motion to proceed under pseudonym, asking that the court only identify their daughter as A.B. throughout the course of the litigation in order to protect her privacy. SPSG opposed the motion. The court denied the motion on September 10, 2021 and ordered that appellants amend their complaint to include A.B.’s name. This timely appeal followed.

parents when she was a minor, and whose disabilities, including a learning disability and a mental disorder, may be disclosed in that lawsuit, should be protected from public exposure of her identity through the device of appearing in the lawsuit under a pseudonym.”

STANDARD OF REVIEW

Whether an individual is a real party in interest is a question of law, and thus, we use a *de novo* standard of review. *Prince George’s County Office of Child Support Enforcement ex rel. Polly v. Brown*, 236 Md. App. 626, 634 (2018).

We review a request for the use of a pseudonym under the same standard of review as a protective order, and therefore our review utilizes an abuse of discretion standard. *Maryland-National Capital Park and Planning Com’n v. Mardirossian*, 184 Md. App. 207, 217 (2009). “A trial court abuses its discretion only when its decision is manifestly unreasonable or is based on untenable grounds.” *Moser v. Heffington*, 456 Md. 381, 406 (2019). “We do not reverse a trial court’s discretionary determination unless it is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Faulkner v. State*, 468 Md. 418, 460 (2020) (quoting *King v. State*, 407 Md. 682, 697, (2009)).

Appellants argue that we should review the court’s denial of their motion under a *de novo* standard of review, citing *Doe v. Shady Grove Adventist Hosp.*, 89 Md. App. 351, 358 (1991). We do not read *Shady Grove* to say that *de novo* review is warranted in cases concerning a pseudonym. In our view, *Shady Grove* provides that *de novo* review should be used when considering a waiver of the right of confidentiality. *Id.* at 367-68.

Our standard of review is consistent with that laid out by the federal courts considering the use of a pseudonym. *See, e.g., In re: Chiquita Brands International, Inc.*, 965 F.3d 1238, 1246 (11th Cir. 2020), *cert. denied*, 142 S. Ct. 312 (2021) (“We review a district court’s ruling on a party’s use of a pseudonym for abuse of discretion.”); *Plaintiff*

B. v. Francis, 631 F.3d 1310, 1315 (11th Cir. 2011) (“This court applies the abuse-of-discretion standard in reviewing a district court’s order denying a party’s motion to proceed anonymously.”); *Doe v. Stegall*, 653 F.2d 180, 184 (5th Cir. 1981) (“Therefore, the ordinary standard for appellate review of trial court rulings on protective orders is whether the trial court abused its discretion.”).

DISCUSSION

Appellants argue that A.B. is not a real party in interest in this case and, therefore, they can use a pseudonym because Md. Rule 2-201 provides an exception to the requirement that an “action shall be prosecuted in the name of the real party in interest.” SPSG counters that this issue was not preserved below, and even if it was, appellants’ court filings indicate that A.B. is party to this lawsuit.

Appellants also claim that even if A.B. is a real party in interest, her identity should be protected because of her statutory and constitutional right to privacy. SPSG argues appellants have “failed to rebut the presumption that court proceedings are open to the public.”

I.

We, first, address the preservation issue. SPSG contends that because appellants failed to say that A.B. was not a party below, their argument is not preserved. Appellants counter that SPSG claimed A.B. was a party below, and thus the argument is preserved. We agree with appellants.

Maryland Rule 8-131(a) states “[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the

trial court.” Further, “to be preserved for appellate review, an issue simply needs to be raised in or decided by the trial court, regardless of which party raises the issue.” *Ray v. State*, 435 Md. 1, 12 (2013) (quotations omitted).

While appellants did not directly argue that A.B. was not a party in their motion, A.B.’s status as a party was the basis of multiple arguments that SPSG made below. As a result, the issue was “raised in” the trial court and is preserved for our review.

We also hold that appellate review of the motion to proceed under pseudonym is appropriate at the present stage of litigation under the common law collateral order doctrine.

To qualify as a collateral order, a ruling must satisfy four criteria: “(1) it must conclusively determine the disputed question; (2) it must resolve an important issue; (3) it must be completely separate from the merits of the action; and (4) it must be effectively unreviewable on appeal from a final judgment.”

Maryland Bd. of Physicians v. Geier, 225 Md. App. 114, 131 (2015) (quoting *Addison v. Lochearn Nursing Home, LLC*, 411 Md. 251, 285 (2009)). The order below conclusively determined that A.B. may not proceed under a pseudonym, and that decision implicated A.B.’s personal right to privacy. The use of A.B.’s name is completely separate from any potential liability that SPSG may have for its alleged contractual violation, and the use of A.B.’s name at trial would make any decision on anonymity unreviewable on appeal from final judgment. The instant case meets the criteria, and this appeal is properly before this Court.

II.

We next consider whether A.B. is a real party in interest. Appellants argue that A.B. has no right to enforce the contract with SPSG, and thus, she cannot be a party to the contract.⁵ Additionally, they contend under Md. Rule 2-201, she need not be a party. According to SPSG, appellants' filings in the trial court establish that appellants intended A.B. to be a party.

Maryland Rule 2-201 states in pertinent part:

Every action shall be prosecuted in the name of the real party in interest, except that an executor, administrator, personal representative, guardian, bailee, trustee of an express trust, person with whom or in whose name a contract has been made for the benefit of another, receiver, trustee of a bankrupt, assignee for the benefit of creditors, or a person authorized by statute or rule may bring an action without joining the persons for whom the action is brought.

Rule 2-201 allows “a person with whom or in whose name a contract has been made for the benefit of another” to “bring an action without joining the persons for whom the action is brought,” meaning that appellants *could* bring suit for SPSG’s alleged contractual violations without naming their daughter as a party. However, here, appellants brought their lawsuit in their individual capacities and as “next friend” of their daughter. A “‘next friend’ . . . is one who brings suit on behalf of a minor or disabled person because the minor or disabled person lacks capacity to sue in his or her own right, or synonymous with one who defends a suit against a minor or disabled person lacking the capacity to defend.” *Fox v. Wills*, 390 Md. 620, 625-26 (2006). A “next friend” is not necessarily a party to the

⁵ At oral argument, appellants also argued that while A.B. may have been party to the originally filed lawsuit, she is not party to the counts that remain before the circuit court at the time of this argument. This claim was not in appellants’ brief, and thus, we do not address it here.

lawsuit they file, *see Brown v. Daniel Realty Co.*, 409 Md. 565, 589-90 (2009), but the incapacitated person or infant on whose behalf they file is a party. *Id.* at 590. *See also* Md. Rule 2-202(b) (“An individual under disability to sue may sue by a guardian or other like fiduciary or, if none, by next friend, subject to any order of court for the protection of the individual under disability.”).

Despite their assertion that they are only making contractual claims, appellant’s complaint includes requests for non-contractual damages, namely “pain and suffering” that could reasonably be construed to be a claim made on behalf of A.B. *and* appellants. Had appellants filed their lawsuit merely making contractual claims in their own names and asking for related damages, their daughter would not necessarily be a real party in interest. *See* Md. Rule 2-201 (stating that a “person with whom or in whose name a contract has been made for the benefit of another, . . . *may* bring an action without joining the persons for whom the action is brought” (emphasis added)). Moreover, appellants brought the lawsuit “as next best friend” of their daughter, thereby making her a party in this lawsuit. Based on our analysis, we hold A.B. is a party in the underlying case.

III.

Appellants further contend that even if A.B. is a real party, her privacy interests merit the use of a pseudonym. They cite *Doe v. Shady Grove Adventist Hosp.*, 89 Md. App. 351 (1991). SPSG argues that appellants have failed to identify a compelling government interest that would justify concealing A.B.’s identity.

Based on the standard of review, our focus is whether the circuit court abused its discretion in denying the motion to proceed by pseudonym. Here, we are unable to discern

the court’s rationale and thus, we are unable to determine whether the court abused its discretion. We explain the following considerations for use by the trial court.

Generally, courts permit the use of pseudonyms only in limited circumstances. *State v. Cottman Transmission Sys., Inc.*, 75 Md. App. 647, 656 (1988). A party wishing to use a pseudonym must establish the need to limit the public’s access to court proceedings. “Since the right of public access is firmly embedded in the First Amendment, ‘it must be shown that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.’” *Id.* at 657 (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982)). The United States Court of Appeals for the Eleventh Circuit observed:

Lawsuits are public events. A plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger or physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff's identity. The risk that a plaintiff may suffer some personal embarrassment is not enough.

Doe v. Frank, 951 F.2d 320, 324 (11th Cir. 1992).

Appellants argue *Shady Grove* is analogous here. In *Shady Grove*, a plaintiff filed a complaint under the pseudonym “John Doe.” 89 Md. App. at 354. Doe had been hospitalized at Shady Grove Adventist Hospital for pneumonia in early 1990, and while he was there, he was also diagnosed with AIDS. *Id.* Without Doe’s knowledge or consent, two of the respiratory therapists who treated Doe provided Doe’s family and friends with confidential information contained in his medical records in violation of several provisions of the Health Gen. Article of the Maryland Code. *Id.* at 355, 362. Doe suffered severe

emotional distress, and he filed a lawsuit alleging breach of confidentiality of patient medical records and breach of privacy. *Id.* at 355. We reversed the circuit court in part, holding that Doe had “demonstrated a compelling interest in maintaining confidentiality of his identity” and that an order protecting Doe’s identity could be drafted in a manner that did not impede the public’s right of access to court proceedings.

The present case differs in at least three relevant aspects. First, *Shady Grove* provides that *de novo* review should be used when considering a waiver of the right of confidentiality. As explained, *supra*, we do not believe this standard of review applies to the denial of the motion here. Next, unlike in *Shady Grove*, privacy is not the central issue here. Appellants are not trying to remedy claims that SPSG violated their privacy; they seek to remedy claims that SPSG violated a contract. Rather it is alleged A.B. was harmed by the behavior of other students, who were not privy to the contract at issue. Moreover, the mere mention of a disability or medical condition is not akin to the disclosure of medical records in violation of state statutes.⁶ The record contains no indication that any party here has, or intends to, put A.B.’s disabilities at issue in a way that would violate state or federal privacy laws. Under appellants’ reading of *Shady Grove*, courts would be obligated to allow any party suffering from a disability to use a pseudonym regardless of its relevance to the lawsuit. We do not read the *Shady Grove*’s holding to mandate the use of a pseudonym every time a party claims a disability and requests anonymity.

⁶ The respiratory therapists in *Shady Grove* allegedly violated Md. Code Ann., Health Gen. § 4-301 to 304. As discussed, *infra*, this statute governs only the behavior of health care providers and is not relevant here.

In *King v. State Farm Mut. Auto. Ins. Co.*, 157 Md. App. 287, 294-95 (2004), this Court held the trial court’s decision to allow an automobile insurer to litigate anonymously was an abuse of discretion and prejudicial. To the degree appellants rely on *King*, they use it to contend that A.B. need not be named because, unlike State Farm, she is not a party. Regardless, we do not find this case to be particularly relevant here, as this Court’s decision in that case was made largely on the finding that State Farm, as a corporation, had no personal right of privacy. *Id.* at 298.

In *King*, this Court cited a federal case that we do find germane. In *Doe v. Stegall*, 653 F.2d 180 (11th Cir. 1981), a mother brought a lawsuit on the behalf of her two children, alleging that morning prayer and Bible reading exercises in a Mississippi public school were unconstitutional. *Id.* at 181. Fearing harassment and violence as retaliation for their lawsuit, the mother brought the suit anonymously. *Id.* at 182. In an interlocutory appeal, the Eleventh Circuit held that anonymity was appropriate, holding that the high likelihood of violence against the family, and the involvement of child-litigants “tip[ped] the balance against the customary practice of judicial openness.” *Id.* at 186.

We also find *James v. Jacobson*, 6 F.3d 233 (4th Cir. 1993) to be instructive. There, a husband and wife appealed an interlocutory order from a federal trial court that denied their request to proceed anonymously in a medical malpractice action. *Id.* at 234. After deciding an appealability issue, the court ultimately determined that the trial judge abused his discretion by finding that the husband and wife could not proceed anonymously solely based on “unfairness to the defendant” and remanded the case back to the trial court for

reconsideration in light of the appellate decision. *Id.* at 240, 242-43. The court listed factors that may be considered in such a case:

[W]hether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of sensitive and highly personal nature; whether identification poses a risk of retaliatory physical or mental harm to the requesting party or even more critically, to innocent non-parties; the ages of the persons whose privacy interests are sought to be protected; whether the action is against a governmental or private party; and, relatedly, the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Id. at 238.

Appellants' brief bases their claim for A.B.'s anonymity on potential emotional distress at the revelation of her disabilities and their assertion that A.B. is a child-litigant.⁷ We observe that this is one of the factors noted in *Jacobsen* and that while a trial judge may consider such factors as relevant to its determination on a motion to proceed under pseudonym, they are not dispositive as to whether the judge abused her discretion in denying the motion.

Appellants also cite a number of state and federal laws that they argue support A.B.'s right to use a pseudonym. We do not find that the Federal Educational Rights and Privacy Act ("FERPA"), Individuals with Disabilities Education Act ("IDEA"), or the Health General Title of the Maryland Code have relevance here. FERPA governs, among other things, the right of students and families to prevent the release of educational records without consent. *See* 20 U.S.C. § 1232g(b). We see no indication that FERPA is applicable

⁷ In their complaint and briefs, appellants repeatedly assert that A.B. is a minor. As we have noted previously, A.B. was legally an adult at the time this lawsuit was filed.

here, except to the degree that it may limit SPSG’s ability to use A.B.’s educational record in its defense. IDEA aims to protect the rights of children with disabilities to access a free and appropriate public education. *See* 20 U.S.C. § 1400(d). As SPSG is a private school, we do not read this law to be relevant to the case at bar. Even assuming that IDEA applies to SPSG, it only applies to the extent that SPSG may not release any records relating to A.B.’s disability without the consent of appellants. Finally, the provisions of Maryland law that appellants cite in their brief prevent *health care providers* from disclosing private medical information. *See generally* Md. Code Ann., Health Gen., § 4-301 to 307. While courts should take care when dealing with private medical information, we do not find, and appellants do not cite, any Maryland law that mandates non-disclosure of a party’s relevant health conditions in the course of litigation.

On the record in the present case, there is no memorandum or order by the court stating the grounds for its decision, and because there was no hearing on the motion we cannot ascertain the court’s rationale from any transcript. We, therefore, remand without affirming or reversing under Maryland Rule 8-604(d), to the circuit court for clarification, and, if required, reconsideration in light of the factors. We note that the court must balance A.B.’s alleged need for privacy against the public’s interest in openness of courts. In making that determination, the *Jacobson* factors discussed have been “judicially recognized” in several jurisdictions and may provide the circuit court with some assistance. *James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993).

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY REMANDED
FOR FURTHER PROCEEDINGS NOT
INCONSISTENT WITH THIS OPINION;
COSTS TO BE SHARED EQUALLY.**

The correction notice(s) for this opinion(s) can be found here:

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