Circuit Court for Washington County
Case No. C-21-CV-20-284

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1107

September Term, 2020

RONALD C. TEDROW

v.

CENTURI GROUP, INC., ET AL.

Kehoe,
Nazarian,
Sharer, J. Frederick,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: October 20, 2021

On August 9, 2017, Ronald C. Tedrow was seriously injured while working at a construction jobsite in Washington County. On June 15, 2020, he filed a negligence action against NPL Construction Company, Centuri Group, Inc., and Columbia Gas of Maryland, Inc.[1] The gravamen of the complaint was that each appellee was under a duty to provide a safe workplace for Tedrow and failed to do so. Appellees filed motions to dismiss the complaint.

On November 13, 2020, the court granted the motions to dismiss the complaint, doing so without prejudice but also without leave to amend. The practical effect of the court's order was that, although Tedrow could file another action, any claim that he raised in it would be subject to a limitations defense. *See* Md. Code, Courts & Jud. Proc. § 5-101.

To this court, Tedrow raises two issues, which we have reworded:

1. Did the circuit court err by granting appellees' motions to dismiss?
2. Did the lower court abuse its discretion by not granting Tedrow leave to file an amended complaint?[2]

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[1] Originally, there was a fourth defendant, Washington Gas Light Company. Mr. Tedrow voluntarily dismissed WGL as a party prior to entry of the court's judgment in this case.

[2] In his brief, Tedrow frames the issues as follows:

> 1. Did the lower court err by granting Defendants Centuri Construction Group's and Defendant NPL Construction Company's Motion To Dismiss?
>
> 2. Did the lower court err by not allowing Mr. Tedrow leave to amend his Complaint?

We conclude that the circuit court did not err in granting the motions to dismiss. However, the court abused its discretion when it denied Tedrow's request for leave to file an amended complaint. We reverse the judgment and remand this case for further proceedings.

BACKGROUND

As we have related, Tedrow sued NPL Construction Company, Centuri Group, Inc., and Columbia Gas Company for damages resulting from his workplace injury. His 20-page complaint consists of 192 paragraphs of factual allegations and legal assertions together with nine relevant counts asserting claims for negligence, negligent hiring, and *respondeat superior* liability for each defendant.

In relevant part, the introductory paragraphs of the complaint state that the action is to recover "damages resulting from the negligent operation of a drill which occurred as a result of Defendants' choices to allow a dangerous construction operation to exist," and that NPL and Centuri are affiliates.

The allegations concerning the accident itself are set out in ¶¶ 10–21 of the complaint. The relevant paragraphs read as follows:

> 10. On or about August 9, 2017, Mr. Tedrow was employed as a construction worker and was performing his job duties at the Premises.[3]

[3] "Premises" is defined elsewhere in the complaint to be 17220 Virginia Avenue, Hagerstown, Maryland.

11. Mr. Tedrow was operating a drill on the Jobsite[4] to create a hole.

* * *

13. Mr. Tedrow was drilling a hole for installation of pipes for Defendant Columbia Gas.
14. The hole was required to be seventeen (17) feet wide to safely operate the drill.
15. The hole was ten (10) feet wide.
16. While operating the drill, Mr. Tedrow's right foot slipped into the drill.
17. The drill entangled Mr. Tedrow's right foot.
18. The drill cut through Mr. Tedrow's right great toe and two (2) lesser toes on his right foot.
19. The emergency stop was engaged and the drill stopped.
20. Mr. Tedrow was flown to University of Maryland Medical Center as a result of his injuries.
21. At the time of this incident, Mr. Tedrow was an invitee on the premises.

The complaint asserts that the action has been filed to recover damages arising out of "the negligent operation of a drill." The complaint does not otherwise describe what the "drill" was. Paragraph 11 alleges that Tedrow was operating the drill to "create a hole." The hole was supposed to be seventeen feet wide but was actually only ten feet wide. Is the hole that is supposed to be seventeen feet wide the same hole that Tedrow was creating? If it is, then how is anyone other than Tedrow responsible for the negligent operation of the drill? Of course, Tedrow could have been in one hole and digging another. But why not say so? It is also significant that, although it is alleged that Tedrow "was employed as a

[4] Although the term is capitalized, "Jobsite" is not defined or otherwise identified.

construction worker," the complaint does not identify his employer. Additionally, the complaint asserts that Tedrow was an invitee but does not provide a factual basis for that conclusion.

The complaint also contains a series of allegations as to each defendant's duties. The allegations as to each defendant are very similar. Those relating to NPL are fairly representative.

As to that defendant, the complaint asserts that NPL was under a duty to: "inspect its job sites to discover defective, dangerous conditions"; "fix defective, dangerous conditions on its job sites of which it was or should have been aware"; "warn of defective, dangerous conditions on its job sites which it could not prevent or fix"; "hire employees who are qualified to keep its job sites safe"; "hire employees who are qualified to inspect its job sites to discover defective, dangerous conditions"; "hire employees who are qualified to fix defective, dangerous conditions on its job sites of which they [were] aware"; "hire employees who are qualified to warn of defective, dangerous conditions on its job sites of which they are or should be aware that they cannot prevent or fix"; "train its employees to keep its job sites safe"; "train its employees to inspect its job sites to discover defective, dangerous conditions"; "train its employees to fix defective, dangerous conditions on its job sites of which they are aware"; "train its employees to warn of defective, dangerous conditions on its job sites of which they are or should be aware and could not prevent or fix"; "train its employees to keep clear of crush/pinch points on its jobsite; "train its employees to keep clear of holes on its jobsite"; "supervise its employees to be sure its job

sites are safe"; "supervise its employees to be sure they inspect its job sites to discover defective, dangerous conditions"; "supervise its employees to be sure they fix defective, dangerous conditions on its job sites of which they are aware"; "supervise its employees to be sure they warn of defective, dangerous conditions on its job sites of which they are or should have been aware and could not prevent or fix"; "supervise its employees to keep clear of crush/pinch points on its jobsite"; "supervise its employees to keep clear of holes on its jobsite"; and "comply with federal, state, industry, and local statutes and regulations, including but not limited to OSHA Regulations: 19261430 B; and 19261053 B09." Complaint ¶¶ 67–87. Next, the complaint alleges that NPL breached each of these duties. Complaint ¶¶ 87–104

Additionally, the complaint sought monetary damages "in an amount exceeding TWO MILLION DOLLARS ($2,000,000.00)," which violates Md. Rule 2-305, which states in pertinent part:

> Unless otherwise required by law . . . (b) a demand for a money judgment that exceeds $75,000 shall not specify the amount sought, but shall include a general statement that the amount sought exceeds $75,000.

On July 29, 2020, NPL and Centuri moved to dismiss the complaint. In addition to pointing out the Rule 2-305 problem, they asserted that the complaint failed to state a claim because Tedrow grouped "all Defendants together" in a manner that "fails to put NPL and Centuri on notice of any allegations against them." In particular, NPL and Centuri asserted that "[t]here is no allegation whatsoever that Centuri had any involvement at the Premises" and that the complaint "fails to list even the[] basic legal elements of a claim for negligent

hiring, training, supervision" or otherwise allege "facts to show how NPL and/or Centuri satisfy those legal elements."[5]

In his written opposition to the motion, Tedrow asserted that the construction project in question "had multiple companies and contractors present on the jobsite." He proffered the following factual background for his lawsuit:

> On August 9, 2017, Defendant Columbia Gas, Defendant NPL and Defendant Centuri were working on a jobsite in Washington County, Maryland. Defendants were digging a hole so gas pipes could be laid under an existing railroad.
>
> A hole was to be made using a large boring machine. The clearance required for the boring machine to operate was seventeen feet[.] On the date of the incident, the clearance was ten feet[.] Defendants failed to follow Occupational Safety & Health Administration standards for drill clearance, and failed to supervise employees to be sure precautions were taken and standards were followed.
>
> There was insufficient clearance for the drilling machine to be safely operated. Regardless, Defendants required that the work continue and that the drilling machine be operated with inadequate clearance. Mr. Tedrow was operating the boring machine. As he was doing so, his right foot slipped and went inside the boring machine, causing his foot to get stuck. As a result of the breaches, Mr. Tedrow sustained severe injuries to his foot.

Tedrow argued that the allegations in the complaint were sufficient to show that NPL and Centuri "failed to properly hire, train, and supervise its employees working at that jobsite." Because "this case is still in the early stages and discovery has yet to even

[5] Centuri and NPL also asserted that the service of process on them was inadequate. The circuit court did not agree. Centuri and NPL do not raise the adequacy of service of process on appeal.

begin[,]" Tedrow maintained that he was "entitled to explore both written discovery and deposition testimony" regarding particular "hiring, training, and supervision practices" of these defendants. He also sought leave to amend his ad damnum clause to comply with Md. Rule 2-305 prohibiting a specific amount.

In their reply to Tedrow's opposition, NPL and Centuri acknowledged that Tedrow's response "does provide some additional averments" but argued that Tedrow was still "making general bald assertions and conclusory statements, and 'lumping' all defendants together as if one." Likewise, NPL and Centuri argued that the deficiencies in the complaint remained based on Tedrow's description of the "insufficient clearance" as being ten feet rather than seventeen feet:

> So many questions arise. Where is the standard that there be seventeen feet of clearance? Certainly not in the bald assertion and conclusory statement that OSHA standards were not followed. While Plaintiff's Complaint does reference OSHA regulations 1926.1430(b) and 1926.1053(b)(9), the former is in respect of Cranes and Derricks in Construction and the latter is in respect to Ladder Safety, so totally irrelevant to this case.[6]

[6] In fact, an allegation that applicable federal and state regulatory standards were not followed is usually sufficient. *See* Paul V. Niemeyer and Linda M. Schuett, *Maryland Rules Commentary* 323–24 (5th ed. 2019) "Ordinarily, pleadings should not recite argument, case law, statutory law or evidence." (citing *Kee v. State Highway Administration*, 313 Md. 445, 459–60 (1988) ("[I]t was not incumbent upon the plaintiffs to set forth specifically in their complaint the legal argument that their action fell within [a statutory exception to the doctrine of governmental immunity]. . . . The factual allegations of the original complaint were sufficient to bring the action within [the statute], and generally this is all that the rules require."). Of course, if a party cites to specific regulations, the citation should be correct.

On September 25, 2020, Columbia Gas also filed a motion to dismiss the complaint, joining NPL and Centuri's arguments that the complaint failed to state a claim and improperly sought a specific amount of damages. Citing *Heritage Harbour, LLC v. John J. Reynolds, Inc*., 143 Md. App. 698, 710-11 (2002), Columbia Gas argued Tedrow improperly "'dump[ed] . . . all defendants into the same pot,' by asserting the same legal conclusions against each defendant without any factual support." Counsel maintained that the complaint does not "assert any facts to" establish the elements of negligence or to enable Columbia Gas "to discern even the basic nature of the claims" or to "defend against" them.

At the October 7, 2020 hearing on NPL and Centuri's motion, Tedrow's time to respond to Columbia Gas's motion had not yet expired, but court and counsel agreed to have oral argument on both motions. Initially, Tedrow's counsel acknowledged that the complaint violated Rule 2-305 and asked for leave to amend the complaint to correct the problem. The court granted the request. The focus of the hearing- shifted to appellees' assertions that the complaint failed to state a cause of action upon which relief could be granted. Appellees elaborated on the arguments that we have previously summarized.

Quoting from *Heritage Harbour*, 143 Md. App. at 710, counsel for NPL and Centuri asserted that the complaint "dump[s] all [the defendants] into the same pot."[7] Counsel for Columbia Gas joined that argument, complaining allegations that each of the defendants "carried out its business through its employees" who were "acting within the scope of their employment" and therefore as "agents," did not identify "who these employees were" or "what their relationship was to this job site" or "what they were doing."

Counsel for Tedrow countered that the case is not "complicated," counsel pointed to "the first ten paragraphs" that make it clear that:

> NPL [was] using a complicated tool called a bore in a hole that supposed to be 15 [sic] feet wide. And the hole is 10 feet wide. They're working on a pipe

[7] Although "dumped in the same pot" is an evocative phrase, it doesn't have much to do with the problems caused by Tedrow's complaint. Our opinion in *Heritage Harbor* proves the point.

That appeal arose out of a civil action by a council of unit owners against the developers of a condominium project alleging a variety of defects in the design and construction of the condominium buildings. The defendants filed a third-party complaint asserting claims for indemnification and contribution against twenty contractors and subcontractors who had been involved in the project's construction. *Heritage Harbor,* 143 Md. App. at 702–03. Other than identifying them as third-party defendants, the third-party complaint contained *no allegations whatsoever* against eight of the twenty third-party defendants. *Id.* at 710–11. This Court aptly characterized these eight defendants as "dumped in the same pot" as the twelve defendants against whom specific allegations were made. *Id.* at 711.

Returning to the case before us, appellees were not "dumped in the same pot" by Tedrow's complaint. It was (and is) his position that at least one of the appellees was in control of the jobsite when he was injured. Prior to discovery, he didn't know which one. He is permitted to present alternative factual scenarios in his complaint. Md. Rule 2-303(c).

> of a property owner. That property owner is Columbia Gas. We . . . don't know, because it's not public record, the names of the people from Columbia Gas who were supervising the repair of the pipeline. We don't know the names of the employees from NPL who were actually using the bore. But what we know is that the hole wasn't big enough. Mr. Tedrow was sent into the hole to work, and the bore caught his foot and . . . amputated some parts of it. It's a very simple case. . . . [If] this were such a complicated case that sophisticated lawyers couldn't understand that our allegation was the hole was too small to use the piece of equipment in, we'll be happy to go back and amend the Complaint. . . .[8] And of course, it's premises liability. The property was owned by Columbia Gas. The property was being maintained or serviced by NPL, a wholly owned subsidiary of Centuri . . . . And so this Complaint more than adequately puts them on notice of what they did wrong.

In commenting on the parties' contentions, the court stated:

> I have to admit, just from what [Tedrow's counsel] represented here today as to the facts, I've leaned a great deal more about what happened [than I learned by] reading the Complaint . . . . I have to admit, when reviewing the Complaint for [the purposes of the hearing] I couldn't figure out what the diameter of the hole had to do with the injury because Paragraph 16 of the Complaint says "while operating the drill, Mr. Tedrow's foot slipped into the drill." ["]Slipped.["] As far as I know, Mr. Tedrow could be . . . the world-renowned man for this type of machine, and — his foot slipped . . . . I didn't understand the correlation between the hole [and the accident.] I don't know . . . how [the appellees] are associated with . . . his injury.

After the hearing, the court issued a written opinion explaining that the complaint violated Md. Rule 2-305 because it failed to characterize the damages sought as being in

[8] In their brief, appellees point out that Tedrow failed to make a "formal request" to amend his complaint during the proceedings before the circuit court. The standard, however, is one of substance and not form. We think that Tedrow's counsel made it clear to the circuit court that he would file an amended complaint if permitted to do so. This is sufficient to preserve the issue for appellate review. *See* Md. Rule 8-131(a).

excess of $75,000. The court commented that "[h]ad this been the only issue" with Tedrow's complaint, it would have granted leave to amend.

The court then ruled that the Complaint does not state a viable cause of action. "[H]aving read the complaint numerous times," the court explained that the complaint was "a document full of disjointed propositions." The court continued: it

> [T]he Court is not suggesting that a complaint must be equal to the work of a renowned novelist. The Court also recognizes that the pleading must only place the Defendant on notice and need not contain each and every fact upon which the Plaintiff at this time relies. The paragraphs fail to create a causal connection between the Plaintiff, the event, and the Defendants. The Court adopts the term used by Defense counsel in her description of the complaint as "generalized averments." The Court finds that the complaint does not provide sufficient notice to the Defendants and therefore it fails to state a claim upon which relief could be granted.

In an accompanying order, the court granted the motions to dismiss without prejudice but did not grant leave to amend. Tedrow noted this timely appeal.

ANALYSIS

The parties' appellate contentions are variations on those presented to the circuit court: Tedrow argues that his complaint was legally sufficient but, in any event, he should have been given an opportunity to file an amended complaint. Appellees assert that Tedrow's complaint was flawed for the reasons advanced by them to the circuit court and that the circuit court did not abuse its discretion in denying Tedrow's request for leave to amend.

This appeal involves two standards of review: First, we exercise *de novo* review over a circuit court's decision to dismiss a complaint. *Nationstar Mortgage v. Kemp*, ___ Md.

___, No. 43, Sept. Term, 2020, WL 3828679 at *9 (Md. Aug. 27, 2021). "Dismissal is warranted if, even assuming the truth of all well-pleaded factual allegations and drawing all reasonable inferences from those allegations in favor of the plaintiff, the plaintiff still would not be entitled to relief." *Ford v. Edmondson Village Shopping Center*, 251 Md. App. 335, 342 (2021). Second, we review the denial of a motion for leave to amend for an abuse of discretion. *RRC Northeast v. BAA Maryland*, 413 Md. 638, 673 (2010).

We agree with the circuit court that the complaint should have been dismissed. No one disputes the fact that the complaint did not comply with Md. Rule 2-305. Additionally, there are problems with the complaint's allegations as to the circumstances surrounding the accident, which are set out in paragraphs 10 through 21 of the complaint. For these reasons that we have previously explained, these allegations are mystifying. Some of the mystery was cleared up by his counsel's proffer to the circuit court. But appellees are correct in pointing out that a proffer is not the legal equivalent of an amended complaint. Additionally, the proffer neither addressed Tedrow's employment status nor provided a factual basis for his assertion that he was an invitee on the property. Finally, the allegations regarding the appellees' duties are needlessly prolix; by alleging everything as to duty, Tedrow effectively alleged nothing.

With all that said, the circuit court should have given Tedrow leave to amend the complaint. Under Rule 2-341(c), "[a]mendments shall be freely allowed when justice so permits." When reviewing the denial of a request for leave to amend a complaint, we are mindful "that it is the *rare* situation in which a court should not grant leave to amend[,]"

such as when "it would cause prejudice to the opposing party or undue delay, or if a claim is irreparably flawed such that an amendment would be futile." *RRC Northeast v. BAA Maryland*, 413 Md. 638, 673-74 (2010) (emphasis added); *see also, Impac Mortgage Holdings v. Timm*, 245 Md. App. 84, 124 (2020), *aff'd*, 474 Md. 495 (2021); *Nouri v. Dadgar*, 245 Md. App. 324, 366 (2020). The party opposing the amendment has the burden of showing prejudice. *Nouri*, 245 Md. App. at 366; *Mattvidi Associates v. NationsBank of Virginia*, 100 Md. App. 71, 83 (1994).

An abuse of discretion occurs when a court makes a ruling that is:

> well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. That kind of distance can arise in a number of ways, among which are that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

North v. North, 102 Md. App. 1, 14 (1994).

In *RRC Northeast*, the Court made it clear that a dismissal of a complaint without leave to amend should occur only in "rare situation[s]." 413 Md. at 673-74. In the present case, the flaws in Tedrow's complaint appear to be repairable. No discovery had occurred in the case. Permitting a party to file an amended complaint five months after the original complaint was filed would not constitute an undue delay. Appellees do not assert that they would have been prejudiced if the court had granted leave to amend. The court's decision to dismiss the complaint without leave to amend does not follow logically from the circumstances presented by this case.

We reverse the judgment and remand the case to the circuit court with instructions for it to grant appellees' motion to dismiss without prejudice and with leave to amend.

THE JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY IS REVERSED AND THIS CASE IS REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE DIVIDED EQUALLY BETWEEN APPELLANT AND APPELLEES.