

Circuit Court for Montgomery County
Case No. C-15-CV-22-002914

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1396

September Term, 2023

HISHAM KASSAB

v.

DELTA AIRLINES, INC.

Nazarian,
Reed,
Shaw,

JJ.

Opinion by Reed, J.

Filed: March 31, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant Hisham Kassab was removed from a Delta Airlines flight. Kassab did not claim a particular injury aside embarrassment but, nevertheless, sued appellee Delta for \$100,000. The case never reached the merits, because the Circuit Court for Montgomery County granted Delta’s motion to dismiss. Kassab appealed. Although he presents one question for our review, we discern two separate issues, namely:¹

1. Did the trial judge err in finding that service of process was defective, because Delta had not been served a copy of the summons?
2. Did the trial judge err in the finding that Appellant’s claims were prohibited under the Montreal Convention?

We hold the circuit court erred in finding that service of process on Delta was defective. However, that error was harmless because the court properly found the Montreal Convention prohibits the Kassab’s claims in the first place. As a result, we affirm the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Kassab launched at least two lawsuits against Delta after he and his children were removed from a flight between Atlanta, Georgia and Baltimore, Maryland. This journey was the final leg of Kassab’s return from Rome, Italy. The parties disagree about what led to the Kassab’s removal. Kassab claims Delta wrongly accused him of uttering profanities at the flight crew. He describes his removal from the aircraft as “wrongful,

¹ Kassab’s brief poses one question: “Was the trial court’s dismissal of the complaint with prejudice, principally based on the statute of limitations imposed by the Montreal Convention, legally correct when *Chubb Insurance Company v. Menlo Worldwide Forwarding* 634 F.3d 1023 (9th Cir. 2011) established that not all complaints related to international carriage by air are bound by the statute of limitations of the Montreal Convention?”

unfair, unjust, malicious, and callous,” but does not allege a physical injury.

Three years after the incident, Kassab sued Delta in the Circuit Court for Montgomery County and initiated a separate action in the Federal District Court of Maryland. The docket entries show a Montgomery County sheriff served Delta’s registered agent a copy of the complaint with a summons and, later, filed a return of service. The sheriff’s return of service indicated the summons and complaint were left in Delta’s resident agent’s mailbox.

Kassab moved for an order of default, which the circuit court denied. Delta then moved to dismiss the complaint, alleging they had not been properly served. As evidence, Delta provided an affidavit from their registered agent which asserted no summons was included with the complaint. Delta further argued Kassab’s lawsuit was prohibited under the Montreal Convention, an international treaty governing airline passenger liability.

The circuit court judge granted Delta’s motion to dismiss after a hearing, ruling Delta had not been served properly because it had not received a summons. The court further ruled Kassab’s claims were prohibited by the Montreal Convention. This appeal followed.

STANDARD OF REVIEW

Maryland circuit courts have no jurisdiction over a defendant until service is either accomplished or waived. *See Lohman v. Lohman*, 331 Md. 113 (1993). We have explained “[a] court obtains in personam jurisdiction over a defendant when that defendant is notified of the proceedings by proper summons.” *Conwell L. LLC v. Tung*, 221 Md. App. 481, 498 (2015) (internal citation omitted). We review a trial court’s dismissal of a case due to an

action for lack of jurisdiction under an abuse of discretion standard. *Id.* at 498-99 (internal citation omitted). An abuse of discretion “should only be found in the extraordinary, exceptional, or most egregious case.” *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 419 (2007) (citing *Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005)). “There is an abuse of discretion ‘where no reasonable person would take the view adopted by the [trial] court[]’ ... or when the court acts ‘without reference to any guiding rules or principles.’ An abuse of discretion may also be found where the ruling under consideration is ‘clearly against the logic and effect of facts and inferences before the court[]’ ... or when the ruling is ‘violative of fact and logic.’” *Wilson*, 385 Md. at 108. (citation omitted).

Furthermore, “[t]he interpretation of an international treaty and specifically, the treaty's application to conflicting state law, are inherently issues of law, and thus, as is consistent with our review for all questions of law, we review the order and judgment *de novo*.” *Register of Wills for Baltimore County v. Arrowsmith*, 365 Md. 237, 249 (2001).

DISCUSSION

I. Delta Was Served Properly

a. Legal Background

The requirement that a defendant is provided a summons is reflected in Maryland Rule 2-121(a), which requires the person served is left “a copy of the summons, complaint, and all other papers filed with it...” A corporation may be served by executing service on the corporation’s named resident agent. Maryland Code Annotated, Corporations & Associations (“CA”) Article § 1-401(a).

Sheriffs and their deputies are often called upon to serve process on litigants. They must do so under Maryland Code Annotated, Courts & Judicial Proceedings (“CJ”) Article, § 2-301(a), which requires “the sheriff shall serve all papers directed to him according to their instructions, within the time set by the court.” After service is made, deputy sheriffs typically provide the court a “return of service,” a form indicating the time and date of service, the documents which they served, and to whom service was made.

b. Parties’ Contentions

Both parties agree a Montgomery County Deputy Sheriff served a collection of documents on Delta’s resident agent. The parties disagree, however, as to whether a summons was among the documents served and they rely on conflicting documentary evidence. Delta points to a document titled “Notice of Service of Process” which was prepared by the resident agent. This document is an overview of the documents the resident agent received. The “Notice of Service of Process” includes a note which states “no summons received.” Delta also provides what they say are all the documents served, which notably does not contain a summons. The completeness and accuracy of these documents are supported by the resident agent’s affidavit.

On the other hand, Kassab’s proof is the deputy sheriff’s return of service. This sworn document shows an “X” through a check box labeled “Summons,” indicating that the summons was included with the papers at the time Delta was served.

c. Analysis

We conclude the record here, while thin, supports the contention that Delta received the summons. We hold Delta’s bald denial, without more, cannot overcome the

presumption in the sheriff's return. The Maryland Supreme Court has explained "a proper official return of service is presumed to be true and accurate until the presumption is overcome by proof and the mere denial of personal service by him who was summoned will not avail to defeat the sworn return of the official process server." *Weinreich v. Walker*, 236 Md. 290, 296 (1964).

This Court has also explained "the presumption of service founded upon the sheriff's return may be overcome, but that is not something easily done." *Harris v. Womack*, 75 Md. App. 580, 586 (1988). Much more evidence than a simple denial is needed to overcome the presumption of a return's accuracy. The party claiming defective service must offer "corroboration" of the claim of defective service "by independent disinterested witnesses, plus lack of refutation, when challenged" by the person who effectuated service. *Weinreich*, 236 Md. at 297. Here, we cannot say Delta produced sufficient evidence to overcome the presumption created by the sheriff's return. We conclude Delta's evidence amounts to little more than mere denials. Therefore, we presume the accuracy of the deputy sheriff's return and hold Delta was properly served process in this case.

II. The Case was Properly Dismissed under the Montreal Convention

a. Legal Background

The Montreal Convention is a multinational treaty which creates a unified system of liability for international air travel. The Montreal Convention "applies to all international carriage of persons, baggage or cargo performed by aircraft for reward." Montreal Convention, Art. 1(1). International travel includes domestic connections on multi-leg international flights. *Id.* at Art. 1(2). Indeed, the Montreal Convention "preempts

all federal or state-law claims falling within” the scope of international carriage of persons. *Atia v. Delta Airlines, Inc.*, 692 F. Supp. 2d 693, 699 (E.D. Ky. 2010).

Among the limitations the Montreal Convention places on those seeking to recover damages resulting from international flights is a two-year statute of limitations. In other words, a passenger must assert a claim within two years of arrival at the final destination.

The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

Montreal Convention, Art. 35(1). Further, an international traveler who alleges they have suffered death or personal injury may make a claim for compensation under the same time frame:

The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Montreal Convention, Art. 17(1).

b. Parties’ Contentions

Kassab argues his claims are not for “damages” as defined in the Montreal Convention. He maintains the Montreal Convention only applies to three types of damages: (1) death or injury to passengers; (2) damaged sustained to checked baggage; and (3) damages caused by delays. He asserts these categories “do not apply to the wrongful deplaning” he experienced in this case.

Unsurprisingly, Delta argues the Montreal Convention applies to Kassab’s claims. It notes the Montreal Convention governs liability for all international air travelers and

provides the exclusive remedy for all claims relating to international carriage. According to Delta, this means Kassab filed his complaint beyond the two-year statute of limitations period established in the Montreal Convention. Delta further argues even if it had been timely, Kassab does not allege facts sufficient to establish a claim for damages under the Montreal Convention.

c. Analysis

First, we note the United States and Italy are signatories to the Montreal Convention. *Second*, the Montreal Convention applies “to all international carriage of persons . . . performed by aircraft for reward.” Montreal Convention Art. 1(1). Kassab and his family were passengers on a flight from Rome to Baltimore, with a stopover in Atlanta. It was before this final leg of the international journey that Kassab and his family were removed from the flight. We conclude this domestic leg of the journey was still an “international carriage of persons” under Art. 1 (2) of the Montreal Convention.

1. Statute of Limitations

Under the Montreal Convention, as an international traveler claiming damages, Kassab was required under Article 35(1) to file his complaint within two years of landing. Kassab’s flight landed on August 8, 2019, but he did not file a complaint until August 9, 2022—a full year beyond the two-year statute of limitations.

Kassab’s argument that “the definition of damages in the Montreal Convention does not apply to the wrongful deplaning . . . and [t]herefore, the Montreal Convention’s two-year statute of limitations does apply” is unavailing. He seems to argue a theory of tort damages, which is not enumerated in the Montreal Convention, is not subject to the

Convention’s statute of limitations. Kassab is claiming damages for an alleged harm done to him because Delta forced him off of one of their airplanes. We see no way the Convention would not address such a claim. The relevant article of the Convention states, “in the carriage of passengers . . . [,] **any** action for damages, however founded, **whether under this Convention or in contract or in tort or otherwise**, can only be brought subject to the conditions and such limits of liability as are set out in this Convention” Montreal Convention, Art. 29 (emphasis provided).

2. No Bodily Injury Claim

We could end our analysis with what is stated above, but to ensure thoroughness, we address the fact that Kassab did not state with particularity what tort theory underlies his lawsuit. Specifically, Kassab did not allege a bodily injury. As noted, under Article 17 of the Montreal Convention a claim may be based on: (1) an accident; (2) that caused death or bodily injury; (3) that took place on the plane or in the course of any of the operations of embarking or disembarking.” *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1172 (11th Cir. 2014).

Kassab does not allege any accident occurred, nor that he or his family suffered any bodily injury. It seems apparent Kassab has no basis to recover under Montreal Convention Article 17. He attempts to sidestep these requirements by claiming he is not seeking compensation under Article 17 and instead is pursuing some other theory of liability.

Kassab’s complaint and briefing are bereft of any legal mechanism other than Article 17 that would entitle him to compensation. One logical interpretation of Kassab’s request for compensation “in excess of \$100,000” for “[Delta’s] wrongful, unfair, unjust,

malicious, and callous removal” would be as a request to be compensated for emotional damages. The Supreme Court of the United States has not addressed this issue, but “[t]he mainstream view adhered to by courts that have addressed the scope of Article 17 and considered the issue before us is that recovery for mental injuries is permitted only to the extent the emotional distress is caused by the physical injuries sustained.” *Ehrlich v. Am. Airlines, Inc.*, 360 F.3d 366, 376 (2d Cir. 2004).

Moreover, in arguing that Article 17 “does not apply” to his claims, Kassab defeats his own position. He is essentially arguing that because he seeks to recover on some other theory of damages outside of Article 17, “the Montreal Convention does not apply to the wrongful deplaning” and he is entitled to some alternative relief in Maryland courts. But “the Supreme Court of the United States has stated that the Montreal Convention . . . affords **the exclusive remedy** for any personal injury suffered on board an international flight or during any operations of embarking or disembarking.” *Aikpitanhi v. Iberia Airlines of Spain*, 553 F. Supp. 2d 872, 878 (E.D. Mich. 2008) (emphasis provided). The Supreme Court of the United States has clearly explained international passengers have no remedy for injuries outside of the Montreal Convention:

The Montreal Convention, to which the United States has now proscribed, clarifies, but does not change the Warsaw Convention’s exclusivity domain. We therefore hold, that recovery for a personal injury suffered on board an aircraft or in the course of any of the operations of embarking or disembarking if not allowed under the Convention, is not available at all.

El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155, 161 (1999) (internal citations omitted) (cleaned up).

The trial judge correctly pointed this out at the hearing on Delta’s motion to dismiss, stating, “the law is that the Montreal Convention has been held to totally preempt any claim involving embarking or disembarking; and the only way you get to recover on your claim is if you come within those specific parameters of the convention.”

We agree with the circuit court and hold recovery is barred because there is no bodily injury alleged—as required under Article 17—and because any alternative claim is completely preempted by the Montreal Convention.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. APPELLANT TO PAY THE
COSTS.**