Circuit Court for Baltimore City
Case No. 24-C-19-006841

UNREPORTED*

IN THE APPELLATE COURT
OF MARYLAND**

No. 1403

September Term, 2021

REPUBLIC – FRANKLIN INSURANCE COMPANY d/b/a UTICA NATIONAL INSURANCE GROUP, ET AL

v.

EWING OIL COMPANY, INC.

Shaw,
Ripken,
Eyler, James
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: February 1, 2023

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 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 appeal from an order of the Circuit Court for Baltimore City, granting summary judgment. Appellant, Republic-Franklin Insurance Company, filed a subrogation complaint against Appellee, Ewing Oil Company, to recover insurance proceeds it paid as a result of an explosion at a gas station owned by Vigilante Enterprises, Inc. (Owners) on June 12, 2018. Appellee then filed a Third-Party Complaint against the Owners alleging that they were required to indemnify Ewing.

On May 18, 2021, Appellee filed a Motion for Summary Judgment against Republic-Franklin and the Owners. Following a hearing, the court granted the motion against Republic-Franklin, severed the motion against the Owners and stayed that portion of the case pending this appeal. Appellants, Republic-Franklin presents two questions for our review, which we have rephrased:[1]

1. Did the Circuit Court abuse its discretion when it denied the motion to withdraw deemed admissions?

2. Did the Circuit Court err when it granted summary judgment based on the deemed admissions of the [Owners]?

For reasons discussed below, we reverse the judgment of the Circuit Court.

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[1]

1. Did the circuit court abuse its discretion when it denied the motion to withdraw deemed admissions even though permitting the withdrawal would assist the presentation of the merits of the action and no party would suffer prejudice from the belated filing of the response to the request for admission?

2. Did the Circuit Court err when it granted summary judgment based on the deemed admissions of the VEI Parties?

BACKGROUND

Vigilante Enterprises, Inc. was owned and operated by Nicholas Vigilante and Joseph Vigilante. On December 14, 2014, Vigilante Enterprises, Inc. (Owners) entered into an Agreement with Ewing, in which Ewing agreed to supply gasoline to the Owners' gas station. The Agreement did not require Ewing to perform any inspection, testing, maintenance, or repair of the Owners' equipment, including the vaults or tanks to which it delivered gasoline. The Agreement obligated the Owners to comply with all applicable laws in the storage of their products and the maintenance of their equipment. The Agreement required the Owners to indemnify and hold Ewing harmless from all claims, liability, expenses, and damages arising from their failure to do so. Specifically, the Agreement stated:

> 5. Compliance with Laws. The purchaser represents and warrants to Ewing that it is now in compliance with all federal, state, and local laws, rules and regulations, ordinances, court orders (collectively "Laws") applicable to it and its operation of the Premises, . . . The Purchaser covenants with Ewing that from and after the date of this Agreement, it will comply with all Laws applicable to it and its operations, including without limitation, Laws governing the storage . . . of the Product and it will not permit any unlawful practice on this premises. In this connection, the Purchaser will take all steps necessary to maintain the structural integrity of the storage tanks or other equipment located on the Premises . . . .
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> 6. Indemnification; Insurance.
>
> (a) Indemnification. The Purchaser agrees to indemnify and hold harmless Ewing from and against all loss, damage, . . ., common law liability, claims, actions, costs, and expenses, including reasonable attorney's fees (collectively "Losses") whatsoever arising out of (i) the Purchaser's failure to comply with Section 5 above or (ii) the ownership or operation of the Premises or the business operated on the Premises. This indemnification shall extend, without limitation, to all losses which arise from the Purchaser's violation of any federal, state, or local law including without limitation, those governing storage . . . of the Product . . . .

Ewing delivered gasoline to the Vigilante gas station on June 11 & 12, 2018. Six hours later, on June 12, 2018, an explosion of a 12,000-gallon underground gasoline storage tank occurred at the Vigilante gas station and resulted in extensive property damage and the death of Joseph Vigilante. Following the explosion, Republic-Franklin Insurance paid Vigilante Enterprises, Inc. for the property damage and economic loss incurred pursuant to the parties' insurance contract.

On December 23, 2019, Republic-Franklin filed a complaint in the Circuit Court for Baltimore City against Ewing to recover the insurance proceeds. In its Complaint, Republic-Franklin alleged Ewing caused the explosion by "overfill[ing] one of [Owners'] three underground fuel tanks." As a result, "gasoline vapors that had been displaced by the fuel entering the tanks accumulated and caused an over-pressurization of the fuel tanks." This "triggered emergency vents on the tanks to open and release gas vapors directly into the vaults" where the fuel tanks were located. Joseph Vigilante entered the vault and turned on a shop vac, which caused the vapors in the vault to combust and led to the explosion.

Ewing filed its Answer to the Complaint on February 18, 2020, denying liability and raising, among other things, the Owners' breach of contract and affirmative defenses. On February 19, 2020, the court issued a pre-trial scheduling order, requiring discovery be completed by October 20, 2020, and a trial date of February 10, 2021. Approximately a month later, the COVID-19 pandemic forced the closure and suspension of trials in

Maryland courts. The parties' Joint Motion to Modify the Scheduling Order was granted on May 8, 2020, and discovery was ordered to be completed by December 5, 2020.

On July 21, 2020, Republic-Franklin filed an Amended Complaint adding two new defendants, Mott Inspection Services[2] and Detect Tank Services ("Detect"). The same day, Ewing filed a Third-Party Complaint against the Owners, alleging they were required to indemnify and hold Ewing harmless from all claims, liability, and damages.

Detect filed a motion to dismiss on jurisdictional grounds on November 6, 2020. A motions hearing was held on January 4, 2021, after the then-pending discovery deadline. During that hearing, the court held Detect's Motion to Dismiss sub curia and ordered "limited discovery as to the jurisdictional issue raised in the Motion shall be completed on or before March 5, 2021."[3] The court further ordered "supplemental briefing" by the parties. Ewing and Detect also filed a Joint Motion to Amend the Scheduling Order, which was granted by the court on January 4th, setting a new discovery deadline for June 5, 2021, and a trial date of December 14, 2021.

As a result of the January 6, 2021, insurrection at the U.S. Capitol, there were extensive closures in Washington, D.C., particularly in the areas immediately surrounding the U.S. Capitol and White House, known as the "Green Zone." On January 14, 2021, the District of Columbia initiated a series of road closures in the Green Zone in advance of the

[2] Mott Inspection Services was dismissed as a party for lack of jurisdiction on February 12, 2021 and is not a party to this appeal.

[3] The Circuit Court heard oral arguments on Detect's Motion to Dismiss, which it granted on April 21, 2021.

January 2021 inauguration. The closures remained in effect until after the inauguration. The area was restricted to only residents and businesses within the zone. At that time, counsel for the Owners' office was located in the Green Zone.[4]

Ewing served Requests for Admissions on the Owners' counsel by email on January 19, 2021.[5] The Owners' response to the requests for admissions was due on February 18, 2021.[6] Counsel for the Owners failed to respond within the thirty-day deadline and later stated, he "did not notice the email with the requests for admissions when it came in." The request for admissions stated, in pertinent part:

> The explosion occurred on the [Owners] . . . premises and arose out of the business conducted thereon[;]
>
> The fuel storage system (particularly Vault 2) was missing required equipment, including censors, fans and alarms[;]
>
> Numerous other persons or entities, including the Vigilantes but EXCLUDING Ewing, were responsible for inspecting, maintaining and repairing the fuel storage system and related equipment and failed to do so[;]
>
> Numerous other persons or entities, including the Vigilantes but EXCLUDING Ewing, were responsible and owed and breached duties to ensure the fuel storage system and related equipment complied with applicable laws and failed to do so[;]

[4] Counsel stated, "[d]espite being eligible to go into the office, [he] chose not to because of the charged atmosphere in D.C. He had his laptop and cellphone with him while he was out of the office."

[5] Ewing states the Request for Admissions "largely mirror the specific allegations [Joseph Vigilantes'] Estate had asserted against the numerous defendants in its . . . wrongful death lawsuit."

[6] Rule 2-424(b) provides that response to requests for admission is due 30 days after service of the request or 15 days after the initial pleading is due, whichever is later. Here, February 18, 2021, was the later of those two dates.

> Inspection results and the failure to address deficiencies[;]
>
> Key safety features of the fuel storage system were disengaged, and safety practices ignored with respect to the operation and maintenance of the fuel storage system, and its related equipment[;]
>
> Ewing . . . owed Vigilantes no duty to inspect, repair or maintain Tank 2, Vault 2 or any component thereof[; and]
>
> None of the tanks were overfilled by Ewing as alleged[.]

On May 18, 2021, Ewing filed a Motion for Summary Judgment in both Republic-Franklin's case and its own Third-Party Complaint, attaching as an exhibit, what it considered as the Owners' "deemed admissions." The Owners' served answers to the Requests for Admissions and filed a Motion to Withdraw Deemed Admissions on June 2, 2021. On that same date, Appellants, Republic-Franklin and the Owners, filed a Joint Opposition to the Motion for Summary Judgment, attaching the Owners' June 2nd responses as an exhibit.

A motions hearing was held on July 29, 2021, in the Circuit Court for Baltimore City on the Motion to Withdraw Deemed Admissions. The court ruled from the bench, stating:

> The Court considers the case law on Rule 2-424(d). And the case law touches upon . . . [that] discretionary rule. There's no requirement that the Court authorize the withdrawal of admissions. However, the Court also - - the case law is very clear that something like time and expense just in and of itself is not enough to show prejudice. And then otherwise, it's a case by case basis.
>
> The case law also says that the movant's conduct must be considered in light of any prejudice to the party. And then also the Court should consider the proximity of the trial date and also overall the Court should consider whether or not the removal or the withdrawal of the admissions relates to the

> difficulty which the party who is objecting, essentially, will face in proving its case.
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> * * *
>
> I understand some of the difficulties that have happened. But I think also that from January 19th to May 18th is a bit unreasonable. Some of the cases that I had opportunities to review during the recess deal with answers or admissions or responses to the requests for admissions that were filed, you know, eight days later, ten days later, two weeks later or whatever. And this was several months. And so the Court notes that as, well.
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> * * *
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> And so for all those reasons, the Court finds that the defendant has satisfied the Court that withdrawal or amendment will prejudice the defendant in maintaining the action or the defense on the merits. And for that reason, the Court will rule then that . . . Third Party Vigilante Defendants' Motion to Withdraw Deemed Admissions is denied.

The next day, the court heard argument on Ewing's Motion for Summary Judgment:

> In this particular case there - - the admissions, which by law, are conclusively binding. The admissions of the Vigilante Defendants are - - the parties are that the Defendant didn't owe a duty to do any type of maintenance or . . . inspections, that the Defendant's only duty was to fill the tanks, and that the Defendant didn't engage in any negligent conduct as it relates to this accident, such as overfilling the tanks, so the tanks weren't overfilled.
>
> These admissions . . . are conclusively binding, and so they can't - - Vigilante can't escape them nor can the Plaintiff.
>
> * * *
>
> So inasmuch as the Plaintiff stands in the shoes of the Vigilante parties in this case, they're bound not only by the, as I stated, the admissions, but they are more so bound by all defenses that are applicable against the Vigilante parties, and therefore applicable against the Defendant. And so for those reasons the Defendant Ewing's motion to summary judgment is granted.

The court entered judgment in favor of Ewing.

On August 9, 2021, Appellants jointly filed a Motion to Reconsider and Motion to Alter or Amend a Judgment, which Ewing opposed. The court denied the motion without a hearing on October 18, 2021. Ewing then filed a Motion for Summary Judgment on the Third-Party Complaint in reliance of the deemed admissions. While the motion was pending, Appellants filed a Joint Motion to Sever and Stay the Third-Party Complaint. The court granted the joint motion on December 7, 2021, cancelling the December 14th trial date and ordering the Third-Party Complaint be severed from the case and stayed, pending the resolution of this appeal. Appellants timely appealed.

DISCUSSION

Standard of Review

A circuit court's decision regarding an untimely response to a request for admissions is reviewed under an abuse of discretion standard. *See Wilson v. John Crane Inc.*, 385 Md. 185, 198 (2005). An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court . . . or when the court acts without reference to any guiding rules of principles." *Id*. (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal quotations omitted). 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.'" *Id*.

We review a trial court's grant of a motion for summary judgment *de novo*. A trial court may grant a motion for summary judgment if there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Md. Rule 2-501. "When ruling on a motion for summary judgment, a court must view the facts, including

all inferences drawn therefrom, in the light most favorable to the opposing party." *Sterling v. Johns Hopkins Hosp.*, 145 Md. App. 161, 167 (2002). "To avoid summary judgment, however, the non-moving party must present more than general allegations; the non-moving party must provide detailed and precise facts that are admissible in evidence. *Appiah v. Hall*, 416 Md. 533, 546 (2010) (citing *Beatty v. Trailmaster Prods., Inc.*, (citation omitted))." "A reasonable dispute over a material fact will preclude summary judgment, because its resolution lies with the jury." *Carter v. Aramark Sports & Ent. Servs., Inc.*, 153 Md. App. 210, 225 (2003).

I. Motion to Withdraw Admissions

Appellants argue the court abused its discretion in denying the Owners' Motion to Withdraw Deemed Admissions. Appellants assert the court did not consider the first prong of Rule 2-424(d) when making its decision and argued, "virtually all of the [d]eemed [a]dmissions are conclusory and not about matters that cannot be seriously disputed." Appellants contend that the deemed admissions are legal conclusions that go to the ultimate issue. Finally, they argue the court reached a decision that imposed an extremely severe punishment on them, despite the court's recognition that neither party acted nefariously in failing to timely respond to the request for admission. They cite *Gonzales v. Boas*, 162 Md. App. 344 (2005) to support their argument.

Ewing argues Appellants failed to satisfy the requirements of Rule 2-424(d) because Appellants did not timely respond to the requests for admissions. Ewing asserts withdrawal was properly denied because it would not have assisted the presentation of the case on the merits. Further, Ewing argues it would have been prejudiced by a withdrawal of the

admissions. According to Ewing, the court properly exercised its discretion in denying the motion.

Maryland Rule 2-424 titled "Admission of facts and genuineness of documents" states, in part:

> (a) **Request for admission.** A party may serve one or more written requests to any other party for the admission of (1) the genuineness of any relevant documents . . ., or (2) the truth of any relevant matter of fact set forth in the request. . . .
>
> (b) **Response.** Each matter of which an admission is requested shall be deemed admitted unless, within 30 days after service of the request or within 15 days after the date on which that party's initial pleading or motion is requires, whichever is later, the party to whom the request is directed serves a response signed by the party or the party's attorney. . . .
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> * * *
>
> (d) **Effect of admission.** Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment. The court *may permit* withdrawal or amendment if the court finds that it would assist the presentation of the merits of the action and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or the defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against that party in any other proceeding.

(emphasis added). The Rule "provides that a court should determine whether to allow for withdrawal or amendment of party admissions according to a two-prong test, of which both parts must be fulfilled before a court 'may permit,' in its discretion, the sought withdrawal." *Wilson*, 385 Md. at 201.

In *Wilson*, the defendant failed to respond timely to plaintiffs' request for admissions, and on June 17, 2002, filed a motion for leave to withdraw the admissions. *Id*. at 195. Trial was scheduled for June 26, 2002. *Id*. at 194. The trial court denied the request

because it found the plaintiffs would suffer prejudice "as [the defendant] did not bring its motion to withdraw or amend until after discovery was closed and the trial was scheduled to begin within days." *Id.* at 191.

The Supreme Court of Maryland[7] held the court did not abuse its discretion in denying the motion. *Id*. The Court noted the judge "was put into the unenviable position of having to decide only four days before the scheduled start of trial, whether to grant [the defendant] the opportunity to withdraw or amend its deemed admissions. . . ." *Id*. at 199. The Court reasoned, under the first prong, "there is little doubt that the admissions . . . made were of importance to the merits of" the claim and the defense. *Id*. at 201. "The admissions . . . conclusively established" certain facts in the case, which "help[ed] create the link by which a jury could find that the plaintiff's illness, and eventual death, were caused in part by [the defendant's] products." *Id*. (internal quotations omitted). The Court noted, "petitioners at trial still have the burden of establishing that [the defendant's products] were a substantial contributing factor to . . . [plaintiff's illness and death], the admissions certainly cannot be said to have concerned matters which either cannot be or are not disputed." *Id*. (internal quotations omitted).

In analyzing the second prong, the Court stated, "the circumstances are such that [the Plaintiffs] would likely have been prejudiced if the trial court had allowed [the Defendant] to withdraw or amend its relevant admissions at the late point in which

[7] On December 14, 2022, by subsequent gubernatorial proclamation, the name of the Court of Appeals was changed to the Supreme Court of Maryland. We shall use the current appellation of that court throughout this opinion.

withdrawal was sought." *Id*. at 202. The Court pointed to the Plaintiffs' change in trial strategy due to their reliance on the deemed admissions and the type of litigation, a mass tort claim. *Id*. at 202-05. The Court emphasized, "[t]he proximity of the trial date [a]s [a] . . . considerable concern when undertaking a prejudice analysis in relation to Rule 2-424(d)." *Id*. at 204. (comparing *Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co.*, 123 F.R.D. 97, 107 (D. Del. 1988) ("finding that prejudice would occur if the court 'were to allow the withdrawal of the admissions less than a month prior to the beginning of the . . . trial. At this late date, plaintiffs do not have the time to begin fresh discovery to establish facts previously admitted.'") with *Herrin v. Blackman*, 89 F.R.D. 622, 624 (W.D. Tenn. 1981) ("because 'no trial date has been set . . . no real prejudice can have accrued to the plaintiff' and late filing of responses to request for admissions should be allowed")); (citing *United States v. Golden Acres, Inc.*, 684 F. Supp. 96, 98 (D. Del. 1988) ("disallowing withdrawal of an admission where '[g]ranting the motion here could well delay trial'") and *E.E.O.C. v. Jordan Graphics, Inc.*, 135 F.R.D. 126, 129 (W.D.N.C. 1991) ("stating that '[t]o permit the admissions to be withdrawn at this late date may require additional discovery and would most likely delay the disposition of this matter. For these reasons, the Court believes that withdrawal of the admissions would prejudice Defendant, and that therefore, withdrawal of the admission . . . is not appropriate.'")).

This Court examined the rule's two-prong test in *Gonzales v. Boas*, 162 Md. App. 344 (2005). There, Appellant filed a response to a request for admissions eight days late because of an oversight by appellant's counsel. *Id*. at 350. At the time the response was filed, the case had been pending for three months and was not near trial. *Id*. After the

expiration of the thirty-day deadline allotted in Rule 2-424 for responses, Appellee moved for summary judgment, arguing that appellant failed to timely respond to his request for admissions, all such facts were deemed admitted, and thus, there were no material facts in dispute. *Id*. at 351. Appellant responded to the motion, arguing there were material facts in dispute and her response, although late, constituted a denial of the requests that could only be stricken upon motion by Appellee. *Id*. In response, Appellee filed a motion to strike Appellant's response to his requests as being untimely. *Id*. The trial court granted Appellee's motion to strike Appellant's response as untimely and entered summary judgment in Appellee's favor. *Id*. at 349.

We held that the court "abused its discretion in granting Appellee's motion to strike and/or alternatively, in failing to permit appellant to withdraw the deemed admissions." *Id*. at 357-58. We noted, "as established by the permissive language throughout Rule 2-424, the court has a great deal of discretion in deciding how to handle the situation when an untimely or insufficient response to a request for admission is filed." *Id*. at 357. We explained:

> Generally, the Maryland Rules will be applied literally because the satisfactory resolution of disputes through litigation is dependent upon the certainty and timeliness of the process. In many instances, the Rules themselves provide the framework for handling Rule violations, which often involve the exercise of discretion by a court. This is certainly true in the discovery area.
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> There have been instances[] . . . when a party did not bear the full effect of a Rule violation, especially when the violation was technical, was an excusable instance, not part of a pattern, not willful, resulted in no prejudice to other parties, did not interfere with the orderly administration of the court's

> docket, and the sanction was grossly disproportionate to the nature of the violation.
>
> The point is that the Rules are designed to promote justice, and their literal application will generally do so. Violations will be excused, or a lesser sanction imposed, only in those rare instances in which a literal application, or a heavier sanction, denies justice.

Gonzales, 162 Md. App. at 363.

We reasoned "the court provided no explanation for its decision to strike Appellant's response except that it was untimely[,] [and] [a]s the text of the rule makes plain, . . . an untimely response [alone] does not automatically require that the response be stricken and does not, by itself, prevent a court from allowing withdrawal of any deemed admissions." *Id*. at 358. We emphasized "the court should have considered how permitting withdrawal would aid in the presentation of the merits of the case and whether [A]ppellee was prejudiced by appellant's late response." *Id*. at 360. We stated:

> The nature of the requests and the practical effects of not permitting a withdrawal or amendment of deemed admissions are relevant factors to consider in determining whether the court abused its discretion. . . . Moreover, [A]ppellant's conduct must be considered in light of any prejudice to [A]ppellee.

Id. at 360.

Finally, we noted a court "must consider the culpability of Appellant in failing to respond and the egregiousness of her conduct." *Id*. at 361. "[T]he most severe sanctions are generally handed down as a result of willful and contumacious conduct on the part of the noncomplying party." *Id*. (citing *Williams v. Williams*, 32 Md. App. 685, 691 (1976)). We stated, "upon consideration of a discovery violation, the court must keep in mind the

purpose of the discovery rules, which is to ensure that all parties are well-informed of the relevant facts of the case by the time the trial begins." *Id.*

In the matter before us, Ewing served seventy-six Requests for Admissions on the Owners' counsel on January 19, 2021. Counsel for the Owners failed to respond within the thirty-day deadline, stating he first "became aware of the requests for admissions" on May 18, 2021, when Ewing filed its Motion for Summary Judgment with the admissions attached. The Owners responded to the admissions on June 2, 2021, approximately nineteen weeks after the requests were first served.

The hearing transcript does not reflect that the trial court considered both prongs of Rule 2-424 in reaching its decision to deny the Owners' Motion to Withdraw Deemed Admissions. The first prong requires Appellants to prove that withdrawal or amendment of the admissions would "assist the presentation of the merits of the action." This Court has explained, implicit in subsection (d) "is the requirement that, to be entitled to withdraw an admission, there must exist a substantial [or material] dispute concerning the admitted fact." *Harvey*, 79 Md. App. at 571. A substantial or material fact is one that "the resolution of which will somehow affect the outcome of the case." *Washington Homes, Inc. v. Interstate Land Dev. Co., Inc.*, 281 Md. 712, 716 (1978) (citing *Rooney v. Statewide Plumbing*, 265 Md. 559, 563-64 (1972)).

Considering the first prong, it is clear the deemed admissions were important to the merits of Ewing's defense, and to the merits of the Appellants' claim, as is evident from Ewing's reliance on them in its motion for summary judgment. Appellee's requests for admissions were "derived precisely from allegations the Estate of Joseph Vigilante . . .

made in its Wrongful Death lawsuit filed . . . against numerous Defendants after the explosion." Similar to *Gonzales*, here, the deemed admissions would prevent a trial on the merits because the admissions were primarily conclusions that conceded Appellants' negligence.

In its ruling, the court did not examine or make a determination regarding whether there were material disputes of fact concerning the admissions and the effect of denying withdrawal. The court did note, however, that if the admissions were withdrawn, there would be evidentiary conflicts and that "there[] [was] no way to try to even resolve" them because discovery was closed. It appears, although it is not clear, that the court based its decision, in part, on its inability to change the discovery deadline and thus, an inability to assess whether there were material disputes. The court stated:

> [T]he argument that has been made which is, is that this can happen in any trial and you have that information and conflicts go in front of the jury and the jury decides which of the two is the more credible. . . . And in this particular case, I say it again, that the defendant --there's no more discovery. This Court does not have the authority to change that.

In analyzing the second prong and the issue of prejudice, the judge noted several factors it considered when finding prejudice to Ewing, including "the movant's conduct[,]" "the proximity of the trial date[,]" and "overall . . . whether or not the removal or withdrawal of the admissions relates to the difficulty which the party who is objecting, essentially, will face in proving its case." The court noted the parties did not act "nefariously" and that it "understand[s] . . . some of the difficulties that have happened" due to the pandemic and the insurrection, but the time period between when the requests were served on January 19th to when the Owners' counsel first became aware of the

requests on May 18th "is a bit unreasonable." The court stated, "the trial is essentially upon us," even though the December 14th trial date was more than four months away from the hearing.

While the court articulated its reasoning under the second prong, the court failed to analyze the first prong of Rule 2-424 as required. As such, we hold the court abused its discretion in denying the motion.

II. Summary Judgment

Appellants argue the court erred when it granted summary judgment in favor of Ewing because summary judgment relied on conclusory statements in the deemed admissions that should have been withdrawn. Ewing argues the court correctly entered summary judgment based on the undisputed facts derived from the Owners' admissions.[8]

Because the court abused its discretion in denying Appellants' Motion to Withdraw Admissions, we hold the court erred in granting Ewing's Motion for Summary Judgment. A motion for summary judgment is proper only when there is no genuine dispute of material fact. *See Appiah v. Hall*, 416 Md. 533, 546 (2010).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED; COSTS TO BE PAID BY APPELLEE.

[8] Our reading of the judge's comments is that the admissions played a role in all bases given for the result. In other words, there was no basis for the decision given by the trial judge that was not tied in part to the admissions.