

Circuit Court for Charles County
Case No. C-08-CV-23-000404

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1426

September Term, 2024

JEMIMA GUTIERREZ, ET AL.

v.

PADRAIG HORGAN

Leahy,
Kehoe, S.,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: October 21, 2025

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

Padraig Horgan, appellee/plaintiff below, filed an eighteen-count complaint in the Circuit Court for Charles County alleging that Margharita Gutierrez, appellant/defendant below, along with her mother Jemima “Mimi” Gutierrez, brother Alek Gutierrez, and cousin Jasmine Chavez, committed tortious acts while engaged in a business venture with Horgan.^{1,2} When Margharita destroyed evidence and repeatedly failed to respond to Horgan’s discovery requests or to answer questions at her deposition, despite court orders to do so, the trial court granted Horgan’s motion for sanctions and entered judgment by default on the count of defamation *per se*, as to liability and all relief sought, and admitted as true the facts against Margharita as alleged in Horgan’s amended complaint related to defamation.

With virtually no evidence presented by Margharita to refute Horgan’s claims, the trial court found no dispute of material fact and granted Horgan’s ensuing motion for summary judgment against Margharita. Margharita now asks us to consider whether the

¹ Because several of the appellants/defendants below share a surname, we will refer to them by their given names. We mean no disrespect in doing so.

² The trial court ultimately dismissed the action against all the defendants but for Margharita. It is unclear from the notice of appeal and from appellants’ brief whether Mimi, Alek, and Ms. Chavez are intended to be included as appellants in the appeal. To the extent those defendants argue that the trial court erred in declining to vacate the discovery sanctions against them, we would find the error, if any, to be harmless in light of their dismissal from the case. We mention them in this opinion only as pertinent to the issues raised by Margharita.

trial court erred in declining to vacate its discovery sanction against her and in granting summary judgment in favor of Horgan.^{3,4}

Finding neither error nor abuse of discretion in the trial court’s rulings, we shall affirm.

FACTUAL AND PROCECURAL BACKGROUND

In June 2022, Horgan and Margharita entered into a business relationship through the establishment of a limited liability corporation called Cerberus Training Academy, LLC (“Cerberus”), which offered dog training services. As partners, Horgan would obtain customers and perform the canine training, while Margharita would handle the day-to-day finances and manage Cerberus in Maryland and Virginia. By September 2022, Horgan and Margharita also became romantic partners, and Horgan moved into Margharita’s house in LaPlata, Charles County.

Both the business and personal relationships unraveled in approximately March 2023, when Margharita ended the romance with Horgan, who then left the United States

³ In her brief, appellant asserts:

1. The circuit court erred as a matter of law when it denied appellant’s motion for a new trial to alter or amend judgment.
2. The circuit court erred when it granted summary judgment in favor of appellee.

⁴ Margharita, in the questions presented in her brief, states that the court erred when it denied her “motion for a new trial to alter or amend judgment” and argues extensively that her post-trial motions should have been granted. The purpose of that argument is entirely unclear, however, as Margharita did not file a motion for new trial or, indeed, any post-trial motion. Hence, there is nothing for us to consider as to her second claim of error.

for his native United Kingdom to undergo medical treatments for what he termed a life-threatening condition.

On May 31, 2023, Horgan filed a complaint against Margharita, Mimi, Alek, and Ms. Chavez.⁵ His complaint included eighteen counts against the four defendants, including allegations of conversion, conspiracy, defamation, breach of fiduciary duty, fraud, deceit, unjust enrichment, tortious interference with economic relationship, and breach of contract.

Horgan alleged that, as early as August 2022, Margharita began converting cash, credit card, and electronic payments from Cerberus’s customers to her own personal use, to his financial detriment. Moreover, in an attempt to dissolve Cerberus, Margharita allegedly sold company-owned property, as well as Horgan’s personal property, and deposited the proceeds into her own personal account. When Horgan demanded to know where the money had gone, Margharita and Mimi falsely assured him that Margharita had not converted the funds to her own use and that any mistakes were made by Cerberus’s bank. And, after his medical diagnosis, Margharita falsely held herself out as his wife to take out a policy of life insurance on him. In addition, Margharita and Ms. Chavez defamed him and his personal and professional reputation to third parties.

Horgan served discovery requests on the defendants between June and August 2023. In August 2023, the defendants moved for dismissal of the action for failure to state a claim

⁵ Horgan amended his complaint on October 25, 2023, slightly changing the causes of action, pursuant to the trial court’s suggestion to “include more specific factual allegations so that the defendant[s] will have a better idea of how to respond to them.”

upon which relief could be granted, after which they moved to stay discovery, pending the outcome of their dispositive motions. Horgan opposed the stay of discovery, asserting, in part, that the defendants’ responses to the discovery requests were more than thirty days past due, with no reason offered for the delay. The trial court ruled that discovery would not proceed, as no defendant had yet filed an answer while the motions to dismiss remained outstanding.

On November 15, 2023, the defendants’ attorney moved to withdraw her appearance, due to an alleged breach of the defendants’ retainer agreement. Horgan opposed the motion, asserting that, in the absence of any evidence of their inability to pay, the trial court should assume that the defendants intentionally declined to pay their attorney to induce her to withdraw so as further to delay the proceedings. Nonetheless, the court granted both the defendants’ attorney’s motion to withdraw and the defendants’ motion to extend the time to file responsive pleadings to Horgan’s amended complaint until December 26, 2023.

New counsel entered his appearance for Margharita on January 2, 2024, and then for all four defendants on January 17, 2024 (beyond the time extension date). During a January 3, 2024 remote hearing, counsel assured the trial court that Margharita would submit her discovery responses to Horgan by February 12, 2024, but she did not do so.

Margharita abandoned her motion to dismiss and answered the amended complaint on March 14, 2024. She expressed her intention to engage in discovery “sometime this spring[.]”

At a March 18, 2024 motions hearing, Horgan complained that he had “received no answers to discovery, at all.” Defendants’ attorney responded that when he joined the case in January 2024, the defendants’ dispositive motions to dismiss were still outstanding, which necessarily delayed discovery, as did the necessity of him getting up to speed on the case.

The trial court denied Mimi’s, Alek’s, and Ms. Chavez’s motions to dismiss and ordered that all defendants provide “complete and fully sufficient discovery” by April 17, 2024, or risk that sanctions might “be imposed.” The court did not require Horgan “to do anything until he receives what is to be provided to him” but when he received the defendants’ responses to discovery, he would be required to produce his discovery responses by May 17, 2024.

The defendants provided notice of service of their discovery responses on April 17, 2024. By lengthy letter dated May 14, 2024, Horgan notified the defendants’ attorney of significant deficiencies in their discovery responses; defense counsel did not respond. On June 7, 2024, Horgan filed a motion for sanctions for the defendants’ continued failure to “produce full and complete responses” to his discovery requests, spoliation of evidence, and refusal to provide dates for their depositions.⁶ None of the defendants responded to the motions for sanctions.

⁶ Horgan later filed separate motions for sanctions against Mimi, Alek, and Ms. Chavez for failing to appear at their duly noted depositions without notice.

On June 4, 2024, the defendants’ attorney moved for leave to strike his appearance. His motion was granted the same day. Horgan moved for reconsideration of the trial court’s grant of the motion to strike, which the court granted on June 11, 2024, thereby vacating defense counsel’s request to withdraw. Defense counsel filed a supplemental motion for leave to strike his appearance on June 18, 2024, asserting that “the trust and confidence of the Defendants in the undersigned has been irretrievably broken.” The court struck his appearance by order entered on July 1, 2024.

On June 26, 2024, Margharita appeared for deposition without counsel. During her testimony, she acknowledged that she had been advised by Horgan’s attorney to maintain and preserve phone and computer records but that she ignored the notice and had wiped the business computer owned by Cerberus clean of information and sold it in November 2023. She also conceded that she had advised a potential trial witness to ignore a subpoena to appear at deposition.⁷ Finally, Margharita admitted that she had not brought the documents listed in the subpoena *duces tecum* for the deposition because she had “questions about them.”

After Margharita refused to answer numerous questions, stating she did not feel comfortable responding without legal representation, Horgan involved the trial court, which advised Margharita that,

[i]f you have things you intend to present at trial or testify to at trial, he’s entitled to know that ahead of time so you can’t just say I’m not going to tell

⁷ The record reveals that Mimi, Margharita’s mother, represented herself to a court reporter as a representative of Horgan’s counsel’s office and canceled a scheduled deposition.

him because I don't want to. So, I am ordering you to answer his questions to the best of your knowledge and your ability.

Margarita then admitted to lying about being Horgan's spouse on an application for life insurance. She further admitted to lying to third parties, including Ms. Chavez and Mimi, about Horgan's trustworthiness, motivated, at least in part, by a desire that people stop doing business with him.

On July 23, 2024, Horgan moved for summary judgment, based, in part, on Margarita's refusal to answer many questions at her deposition, as ordered by the trial court, her admission that she refused to bring requested and relevant documents to the deposition, also as ordered by the court, and her admission that she had "wiped clean" and sold a business computer she had been directed by counsel to retain. Horgan's motion was based, in large part, on Margarita's contempt of the trial court's orders and her refusal to participate in the litigation in good faith. The defendants did not file a response to Horgan's motion for summary judgment.

On July 25, 2024, a third attorney entered his appearance for the defendants. At a hearing the same day, the trial court determined that Horgan's motion for summary judgment was not yet ripe. The court stated that it would review Horgan's motions for sanctions and likely sign appropriate orders prior to the pending trial date of August 19, 2024.

On August 7, 2024, the trial court ordered sanctions for Margarita's failure to comply with its March 18, 2024 order to provide full and complete discovery responses. The order granted judgment by default on the count of defamation *per se*, as to liability and

all relief sought, admitted as true the facts against Margharita as alleged in two other counts of the amended complaint related to defamation, and required Margharita to pay Horgan attorneys’ fees associated with drafting the motion for sanctions.⁸

Just minutes before midnight the night before the August 19, 2024 trial, the defendants filed motions to vacate the orders of sanctions, arguing that their former attorney was entirely responsible for the discovery violations and that they had not had the opportunity to engage new counsel to assist with their defense at the time Horgan’s motions for sanctions had been filed.

At the start of the trial, the defendants attempted to excuse their failure to respond to Horgan’s motion for summary judgment by claiming that the court was required to decide their motions to vacate the discovery sanctions before they were required to respond to the summary judgment motion. The court pointed out that “[i]t doesn’t work that way[,]” explaining that their response to the summary judgment motion was required within fifteen days of its filing, regardless of the status of the court’s ruling on the motions for sanctions.

The trial court denied the defendants’ motions to vacate the discovery sanction orders, which it had not yet seen due to the late filing, “because [the defendants] had ample opportunity to produce discovery and to appear for depositions. We had a hearing on that, and I was very clear about what would happen if they didn’t, and still they chose not to. So, we’re not going there again.” As the court pointed out, it did not impose sanctions “for

⁸ The trial court also ordered sanctions against Ms. Chavez, Alek, and Mimi for their discovery violations, including prohibition from opposing any claim against them as set forth in Horgan’s amended complaint.

a long time. I kept giving them another opportunity and another opportunity. And finally, I did impose the sanctions.”

Despite their failure to file a response to the motion for summary judgment, the trial court permitted the defendants to argue in opposition to the motion. Thereafter, the court denied the motion as to Mimi, Alek, and Ms. Chavez and dismissed all counts against those defendants.

Based on Horgan’s pleadings and argument on his motion, however, the trial court found that “there’s no dispute of material fact, and . . . judgment will be granted as a matter of law” as to Margharita on all counts as alleged against her in the amended complaint. The court reasoned that Margharita and the other defendants were “totally deficient in providing discovery, appearing for depositions, providing answers to interrogatories, or producing documents, also destroyed discoverable evidence and despite numerous attempts . . . by the [c]ourt and delays that were granted to have them comply.” In fact, the court pointed out that, “I have never had a case where the . . . ignoring of discovery rules, the ignoring of deposition rules, were so blatantly ignored and nonresponsive and . . . and uninformative and leaving Plaintiffs in a position where here we are at trial . . . without anything to be prepared as discovery is set to do.” Moreover, although it was “incumbent upon the Defendants to respond to [Mr. Horgan’s allegations] with other facts and affidavits that would raise the question of fact” and to propound their own discovery, they “did nothing to participate in the case.” Therefore, any disputes of fact were “foreclosed by their behavior.”

After a hearing on the issue of damages, the trial court entered judgment against Margharita in the cumulative amount of \$515,579.20. The court entered its written notice of recorded judgment on August 29, 2024. Margharita timely noted her appeal on September 18, 2024.

DISCUSSION

I. Motion to Vacate Sanctions for Failure of Discovery

Margharita asserts that the trial court erred as a matter of law when it denied her motion to vacate the sanctions it had imposed due to her failure to provide timely and adequate responses to Horgan’s discovery requests. As a *pro se* litigant at the time the court imposed its sanctions, she continues, she should have been “given some latitude as she attempt[ed] to navigate the legal process” and accorded a less severe penalty than the denial of “the opportunity to present evidence in her defense[.]” In her view, a new trial is therefore warranted. We disagree.

The fundamental objective of discovery is to advance “the sound and expeditious administration of justice” by “eliminat[ing], as far as possible, the necessity of any party to litigation going to trial in a confused or muddled state of mind, concerning the facts that gave rise to the litigation.” *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583, 595 (2010) (quoting *Balt. Transit Co. v. Mezzanotti*, 227 Md. 8, 13 (1961)). To that end, our discovery protocol requires broad and comprehensive disclosures. *Id.* at 596.

When there is a claim of failure of discovery—including failure to appear at a deposition or to serve a response to interrogatories or request for production or

inspection—the trial court has “broad discretion to fashion a remedy based on a party’s failure to abide by the rules of discovery.”⁹ *Warehime v. Dell*, 124 Md. App. 31, 43 (1998) (quoting *Bartholomee v. Casey*, 103 Md. App. 34, 48 (1994)). In imposing sanctions for discovery failures, a trial court has “considerable latitude.” *Id.* at 44 (quoting *Miller v. Talbott*, 239 Md. 382, 387 (1965)). “Ultimately, discovery sanctions are not to operate as a windfall, but instead are intended to relieve the surprise or prejudice a party suffers when his opponent fails to abide by the discovery rules.” *Watson v. Timberlake*, 251 Md. App. 420, 437 (2021).

Sanctions may be extreme, up to and including dismissal or the entry of default judgment.¹⁰ *Klupt v. Krongard*, 126 Md. App. 179, 201 (1999) (citing *Lone v. Montgomery Cnty.*, 85 Md. App. 477, 485 (1991)). Nonetheless, the “more draconian sanctions, of

⁹ See Md. Rule 2-432(a), which states:

A discovering party may move for sanctions under Rule 2-433(a), without first obtaining an order compelling discovery under section (b) of this Rule, if a party or any officer, director, or managing agent of a party or a person designated under Rule 2-412 (d) to testify on behalf of a party, fails to appear before the officer who is to take that person’s deposition, after proper notice, or if a party fails to serve a response to interrogatories under Rule 2-421 or to a request for production or inspection under Rule 2-422, after proper service. Any such failure may not be excused on the ground that the discovery sought is objectionable unless a protective order has been obtained under Rule 2-403.

¹⁰ See Md. Rule 2-433(a), which permits the trial court to enter an order “refusing to allow the failing party to support or oppose designated claims . . . or prohibiting that party from introducing designated matters in evidence[,]” or an order “entering a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party.”

dismissing a claim or precluding the evidence necessary to support a claim, are normally reserved for persistent and deliberate violations that actually cause some prejudice, either to a party or to the court.” *Butler v. S&S P’ship*, 435 Md. 635, 650 (2013) (quoting *Admiral Mortg., Inc. v. Cooper*, 357 Md. 533, 545 (2000)).

Once a trial court resolves a discovery dispute, our review of that resolution is “quite narrow; appellate courts are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery.” *Warehime*, 124 Md. App. at 44. Accordingly, we are bound by the trial court’s factual findings unless we find them to be clearly erroneous, *Klupt*, 126 Md. App. at 192-93, and we may not reverse unless we find an abuse of discretion. *Falik v. Hornage*, 413 Md. 163, 182 (2010). “Even when the ultimate penalty of dismissing the case or entering a default judgment is invoked, it cannot be disturbed on appeal without a clear showing that [the trial judge’s] discretion was abused.” *Warehime*, 124 Md. App. at 44 (quoting *Mason v. Wolfing*, 265 Md. 234, 236 (1972)).

Here, it is undisputed that Margharita repeatedly failed to respond fully and completely to Horgan’s discovery requests and to answer questions and produce documents at her deposition pursuant to a subpoena *duces tecum*, despite several court orders to do so and repeated warnings that failure to do so could lead to sanctions. In addition, she admitted to spoliation of evidence—wiping clean and selling the only business computer holding pertinent evidence—after she had been instructed by Horgan’s attorney in writing to maintain and preserve the hard drive. Her substantial failure of discovery persisted for more than one year and across the retention by her of three different attorneys. Indeed, it would stretch the bounds of our imagination to conclude that her conduct throughout the course

of this litigation was anything other than intentional and substantial (rather than technical) and prejudicial to Horgan.¹¹ Nonetheless, the trial court generously afforded her multiple opportunities to remedy the discovery failure, all to no avail.

The trial court could have imposed severe sanctions for Margharita’s discovery failures, including default judgment as to **all** counts in the amended complaint or preclusion of the introduction of **any** evidence at trial. Margharita asserts before this Court that the court barred her from introducing evidence in defense of Horgan’s claims. However, the court, in its order granting Horgan’s motion for sanctions, took a more measured approach and ordered judgment by default **only** on the count of defamation *per se*, as to liability and all relief sought, and admitted as true the facts against Margharita as alleged in two other

¹¹ Margharita, in her motion to vacate the sanctions and in her brief, suggests both that she should have been subject to lesser sanctions because “she was a [*pro se*] litigant whose legal representation withdrew from the case and left her without notice a of deposition” and that her “former counsel had been responsible for all of the discovery failures[.]”

First, the record appears to indicate that Margharita’s first and second attorneys zealously represented their clients’ interests. In light of the multitude of evidence in the record that Margharita was solely, or at least primarily, responsible for the failure of discovery, we would not place the blame on the attorneys, both of whom withdrew from the case after disagreements with their client.

Second, for the very brief periods of time that Margharita was without legal counsel, which could have been shorter had she retained a new attorney more expeditiously, she was required to be held to the same standard as when represented by counsel. “It is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel.” *Dep’t of Lab., Licensing & Regul. v. Woodie*, 128 Md. App. 398, 411 (1999). Indeed, this Court has stated that “[t]he principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident.” *Tretick v. Layman*, 95 Md. App. 62, 68 (1993).

counts of the amended complaint related to defamation. Therefore, Margharita was permitted to introduce any relevant evidence related to her defense to the remaining counts.

After examining the entire course of discovery and Margharita’s chronic inaction and obfuscation throughout the litigation, the trial court fashioned its sanction, and we conclude that that sanction fell well within the court’s broad discretion.

Thereafter, Margharita filed a motion to vacate the sanctions, minutes before midnight the night before trial was to begin. Neither the court nor Horgan’s attorney had seen the motion to vacate by the start of the trial, and the court declined to consider the last-minute motion, again explaining that the defendants had had ample opportunity to produce discovery and to appear for depositions and that it had made clear “what would happen if they didn’t, and still they chose not to. So, we’re not going there again.” In addition, the court pointed out that it had not imposed sanctions “for a long time. I kept giving them another opportunity and another opportunity. And finally, I did impose the sanctions.” We perceive no error in the trial court’s determination that the untimely-filed motion to vacate sanctions should be denied, generally for the reasons stated by that court.

II. Motion for Summary Judgment

Margharita also contends that the trial court erred in granting summary judgment as to all the counts in Horgan’s amended complaint. She again states that the trial court’s sanction “preclude[d] the testimony at trial of all of the Appellant’s evidence based upon her failure to comply with the Appellee’s requests for discovery.” As a result, she concludes, “[t]he grounds for which the trial [c]ourt relied upon to support its Summary Judgment ruling was comprised only of the Appellee’s provision of evidence,” and her

ability to contest the Horgan’s claims “was thwarted by a Discovery sanction that could have been less severe.”

Again, Margharita’s argument misstates the trial court’s rulings and fails to take into account her own failure to respond to the motion for summary judgment. We explain.

The Supreme Court of Maryland set forth the applicable standard of review of the grant of a motion for summary judgment in *Dashiell v. Meeks*, 396 Md. 149, 163 (2006):

With respect to the trial court’s grant of a motion for summary judgment, the standard of review is *de novo*. Prior to determining whether the trial court was legally correct, an appellate court must first determine whether there is any genuine dispute of material facts. Any factual dispute is resolved in favor of the non-moving party. Only when there is an absence of a genuine dispute of material fact will the appellate court determine whether the trial court was correct as a matter of law.

(Cleaned up.)

Maryland Rule 2-501(f) provides that, in reviewing a pre-trial motion for summary judgment, the court “shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.”

Rule 2-501(b) requires the party opposing a properly supported summary judgment motion to:

(1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute.

In other words, to defeat a motion for summary judgment, the non-moving party must “show that there is a genuine dispute as to a material fact by proffering facts which would be admissible in evidence.” *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737 (1993).

Here, the summary judgment record consisted of Horgan’s lengthy motion, with thirty supporting exhibits—including Margharita’s deposition transcript, Margharita’s discovery responses, affidavits by Horgan and other prospective witnesses, business credit card and other financial records, and text messages to and from Margharita—which served generally to establish the facts as alleged in his amended complaint. Margharita did not respond to the motion for summary judgment; nor did she propound her own discovery to Horgan to obtain information to use in her defense. It is for those reasons, and not the court’s discovery sanctions, that there was nothing in the record to dispute the material facts as presented by Horgan.

Despite Margharita’s failure to respond to the motion for summary judgment, however, the trial court afforded her counsel the opportunity at trial to argue against the motion and to cross-examine Horgan’s witnesses on damages. Nonetheless, the court pointed out that defeating the motion for summary judgment would be difficult because “there was no discovery propounded by [the defendants] to bring that in. You didn’t file an affidavit with your version of the facts under affidavit. You’re required by the rules to respond with an affidavit just as they were required to file with an affidavit.” After hearing Margharita’s argument, unsupported by evidence in her favor, the court was unable to find any dispute of material fact and granted summary judgment on all counts against Margharita.

Given Margharita’s failure to initiate her own discovery and to respond to the motion for summary judgment, we agree that Margharita presented no dispute of material fact. Therefore, the trial court was correct as a matter of law in granting the motion for summary judgment.

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED;
COSTS ASSESSED TO APPELLANT.**