Circuit Court for Montgomery County
Case No. 467075-V

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1486

September Term, 2021

SHINOK PARK

v.

AXELSON, WILLIAMOWSKY, BENDER & FISHMAN, P.C.

Berger,
Friedman,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: December 29, 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.

*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.

In this *pro se* appeal, Shinok Park, appellant, seeks review of an order, entered by the Circuit Court for Montgomery County, granting summary judgment in favor of Axelson Williamowsky, Bender & Fishman, P.C. ("AWBF"), appellee. The court's judgments were based, at least in part, on Ms. Park's "deemed admissions," the result of her failure to timely respond to AWBF's discovery requests.

Ms. Park presents three issues for our review, which we have rephrased as follows:

> I. Whether the court abused its discretion by deeming admitted AWBF's request for admissions of fact.
>
> II. Whether the court abused its discretion by denying Ms. Park's motion to withdraw those deemed admissions.
>
> III. Whether the court erroneously denied granting summary judgment as to Ms. Park's counterclaims based upon its finding that she had produced insufficient evidence to generate a genuine dispute of material fact in support thereof.[1]

---

[1] In her brief, Ms. Park articulated the issues as follows:

> 1. Whether the trial court abused its discretion by deeming Requests for Admissions of Facts admitted despite the fact that (a) the requested admissions disposed of Ms. Park's counterclaims and (b) there was no showing that Ms. Park's lateness was deliberate, willful, or caused any prejudice;
>
> 2. Whether the trial court abused its discretion by refusing to permit Ms. Park to withdraw the admissions, without any analysis of whether a withdrawal would prejudice the other side.
>
> 3. Whether the trial court erred in finding that "no evidence" was submitted in support of Ms. Park's counterclaims and granting summary judgment as to those claims when, in

We answer these questions in the negative and therefore affirm the judgments of the circuit court.

BACKGROUND

On July 28, 2015, Ms. Park filed a complaint, in the Superior Court of the District of Columbia, against M.B., her former supervisor at the World Bank where she had worked, alleging sexual assault, battery, and intentional infliction of emotional distress ("the Sexual Assault Case").[2] On May 30, 2017, she retained AWBF, a law firm based in Rockville, Maryland, to represent her in that civil suit. In so doing, she signed a "Legal Services Agreement," thereby consenting to the fee schedule set forth therein. The agreement also provided that Bruce M. Bender, Esq., an AWBF partner, would supervise Ms. Park's case.

Following a trial, the jury returned a verdict in favor of Ms. Park on her intentional infliction of emotional distress claim and awarded her damages in the amount of $15,000.[3] The court, however, entered a judgment notwithstanding the verdict in favor of M.B. The court further found that Ms. Park had maintained the action in bad faith and imposed

fact, Ms. Park submitted numerous affidavits and other documentary support.

[2] We will refer to the defendant in the Sexual Assault Case by his initials.

[3] The jury returned a verdict in favor of M.B. as to the sexual assault and battery counts.

sanctions in the form of attorney's fees against her in the amount of $150,000.[4] The court reasoned that:

> [Ms. Park] used vivid facial expressions to communicate to the jury her views about testimony while witnesses testified. When she testified, [Ms. Park] repeatedly ignored court rulings on the admissibility of certain evidence. She listened to bench conferences convened to address objections raised during her testimony and disregarded the directives that resulted from those bench conferences. Indeed, [Ms. Park's] insistence on repeating her testimony, straying beyond the questions asked when she answered, and covering areas declared off limits resulted in about 21 hours of testimony excluding the time spent on bench conferences and matters discussed outside the presence of the jury.

(Emphasis retained).

While the Sexual Assault Case was pending, Ms. Park retained AWBF to represent her in the appeal of a related defamation suit that she had filed against M.B. and his attorney ("the Defamation Appeal"). On February 6, 2018, she signed a second legal services agreement that was substantively similar to the first. During the Defamation Appeal, AWBF filed two appellate briefs in the District of Columbia Court of Appeals. Although Ms. Park did not prevail, that case resulted in a published opinion. *See Park v.* [*M.B.*], 234 A.3d 1212 (D.C. 2020).

On May 29, 2019, AWBF filed suit against Ms. Park to collect $187,980.20 in unpaid legal fees allegedly owed for professional services rendered in both the Sexual

[4] In addition to these attorney's fees, the court imposed a $3,000 sanction against Ms. Park upon finding that she had deliberately attempted to frustrate the discovery process by requesting that a witness decline to appear at his deposition.

Assault Case and the Defamation Appeal. In September 2019, Ms. Park removed the case to the United States District Court for the District of Maryland. The case was remanded back to the circuit court the following month.

After the remand, Ms. Park filed an answer to AWBF's complaint, as well as a counterclaim for breach of contract and negligent representation. In the latter, filed on January 13, 2020, she alleged that AWBF had, among other things:

> . . . failed to amend the complaint against [M.B.] to include claims for intentional and negligent misrepresentations[;]
>
> . . . failed [to] timely address . . . the authenticity of certain alleged email and chat communications that [M.B.] produced[;]
>
> . . . failed to timely identify and/or employ an expert to address the authenticity of certain alleged email and chat communications that [M.B.] produced[;]
>
> . . . failed to properly prepare and advise Ms. Park regarding her testimony relating to certain alleged email and chat communications [M.B.] produced[;]
>
> . . . instructed her to provide false testimony relating to certain alleged email and chat communications [M.B.] produced[;]
>
> . . . failed to properly prepare and advise Ms. Park about her testimony regarding her complaints filed with the World Bank[;]
>
> * * *
>
> . . . altered Ms. Park's medical chart without her knowledge[; and]
>
> . . . litigated Ms. Park's matter in way which subjected her to sanctions in the amount of $153,000.

On June 25, 2020, AWBF served Ms. Park with interrogatories, a request for production of documents, and a request for admissions of facts.[5] The admissions request expressly advised Ms. Park: "The matters requested below are admitted unless, within 30 days after service of these Requests, [Ms.] Park serves upon [AWBF] a written answer or objection address[ing] . . . the matter signed by [Ms. Park's] attorney." It then sought the following admissions:

> REQUEST NO. 1: That you never instructed Bruce M. Bender or [AWBF] to amend your Complaint to include a claim for intentional and negligent misrepresentation[s] against [M.B.]
>
> REQUEST NO. 2: That [M.B.] did not make any intentional and/or negligent misrepresentations to you that caused you damages.
>
> REQUEST NO. 3: That Mr. Bender and [AWBF] hired two separate computer forensic expert witnesses, John Conroy and Brian Halpin, to address the issue of the authenticity of email and chat communications that [M.B.] produced.
>
> REQUEST NO. 4: That both Mr. Conroy and Mr. Halpin determined that all email and chat communications that [M.B.] produced were authentic.
>
> REQUEST NO. 5: That Mr. Bender and [AWBF] spent over 30 hours preparing you for your trial testimony and had multiple meetings in his office.
>
> REQUEST NO. 6: That Mr. Bender advised you to tell the truth relating to all email and chat communications [M.B.] produced.

[5] These discovery requests were served by first-class mail, postage prepaid.

> REQUEST NO. 7: That you reviewed all documents that were submitted as exhibits, including your entire medical chart.
>
> REQUEST NO. 8: That the only damages you are claiming in this case are the sanctions assessed against you in the amount of $153,000.
>
> REQUEST NO. 9: That all sanctions assessed against you by the trial judge in the case of Park v. [M.B.] w[ere] because of your own conduct and not because of any conduct of Mr. Bruce Bender or [AWBF].

Although she was served with AWBF's discovery requests on June 25, Ms. Park sent AWBF an e-mail 29 days later (on July 24), indicating that its discovery requests had only recently come to her attention, writing: "I did not realize that you had provided discovery requests. In light of the current health situation, I am requesting an additional 60 days to respond to your requests."[6] In a reply sent on July 27, AWBF denied Ms. Park's request for a 60-day extension, but granted her an additional 21 days to comply with its discovery requests. Three days later, Ms. Park responded: "Thank you for your response. I will do my best but given my other commitments and health conditions, I seriously doubt that I could prepare in 21 days."

Ms. Park failed to adhere to the amended deadline. Accordingly, on August 18, 2020, AWBF filed a motion to compel discovery, in which it requested that the court: "issue an order compelling [Ms. Park] to respond to the Interrogatories and Request for Production of Documents within 10 days of the date of said Order and also order that the

[6] Ms. Park appears to have been referring to the COVID-19 pandemic.

Request for Admissions of Facts be deemed admitted since no response was filed in a timely manner." Ms. Park filed an opposition to that motion more than two weeks later. In that opposition, Ms. Park claimed that she had not received AWBF's discovery requests until July 20 and assured the court: "I can provide my discovery responses on or before November 15, 2020." On September 21, 2020, the court entered the following order:

> UPON CONSIDERATION of [AWBF's] Motion to Compel Discovery and any opposition thereto,* it is this 18th day of Sept[ember] 2020, by the Circuit Court for Montgomery County, Maryland,
>
> ORDERED: that [AWBF's] Motion to Compel Discovery is granted and [Ms. Park's] Request for Extension is moot, and it is further,
>
> ORDERED: that [Ms. Park] shall file responses to the Interrogatories and Request for Production of Documents within 30 days from the entry date of this Order, and it is further,
>
> ORDERED: that the Request for Admissions of Facts filed on June 25, 2020, are deemed admitted.
>
> ---
>
> * The court finds that even if [Ms. Park] received the discovery requests on July 20, 2020, the responses to all, including the request for admissions, are overdue and an extension from the court was not timely requested.

On October 15, 2020, Ms. Park filed a motion to withdraw admissions of fact, to which she appended belated responses to AWBF's request for admissions. She failed, however, to comply with the order to compel discovery. Rather than timely answering AWBF's interrogatories or responding to its request for production of documents, on October 20 (the day before the discovery deadline), she asked that AWBF consent to yet

another three-week extension. When AWBF denied her request, Ms. Park filed a motion for reconsideration of the order to compel discovery, wherein she asked the court to afford her an additional three weeks to comply therewith. Although the court had not yet ruled on that motion, Ms. Park finally submitted answers to the interrogatories on November 4 and produced the requested documents on November 8.[7]

The court summarily denied Ms. Park's motion to withdraw admissions in an order entered on November 25, 2020. Ms. Park filed a motion for reconsideration on December 21, which the court likewise denied without explanation.

On April 5, 2021, AWBF moved for summary judgment on both its complaint and Ms. Park's counterclaims. The motion was accompanied by eleven exhibits, including AWBF's request for admissions and the affidavit of Mr. Bender, which corroborated the then deemed admissions. Ms. Park amended her countercomplaint on May 14 to include allegations of (i) breach of fiduciary duties, (ii) evidence spoilation, and (iii) intentional misrepresentation. On June 15, AWBF responded with a "Motion to Dismiss or in the Alternative Motion for Summary Judgment," wherein it responded to the new claims alleged in Ms. Park's amended countercomplaint.

Following a hearing, the court granted AWBF's motion for summary judgment in an order entered on October 21, 2021. The court articulated its reasons for doing so in a

[7] In an order entered on December 7, 2020, the court denied Ms. Park's motion as moot and deemed her interrogatory answers and produced documents timely filed, while declaring that "no further extensions will be provided and [AWBF] may seek sanctions if the responses are deficient."

memorandum opinion issued that same day. With respect to its rationale for granting summary judgment in favor of AWBF's breach of contract claims, the court reasoned: "[T]he agreements are clear and there is no genuine dispute that Ms. Park failed to pay AWB&F for the services provided." As to Ms. Park's counterclaims for professional negligence and breach of contract, the court found that they failed for want of "sufficient evidence supporting either claim."[8] The court also concluded that Ms. Park had failed to present sufficient evidence in support of her claim for breach of fiduciary duty, and, in the alternative, found that "there [wa]s no connection between the alleged breaches of duty and the damage (i.e., the sanctions imposed against her) that Ms. Park claims to have suffered." Next, it dispensed with Ms. Park's "spoilation of evidence" count on the basis that "Maryland does not recognize such a[] claim as an independent cause of action." Finally, the court concluded that Ms. Park was unable to demonstrate that she had incurred any damages as a result of AWBF's alleged intentional misrepresentation.

We will include additional facts as necessary to the resolution of the issues.

DISCUSSION

I.

Ms. Park contends that "the trial court abused its discretion in granting [AWBF's] motion to deem the request[] for admissions admitted." (Capitalization omitted). By

[8] In a footnote, the court alternatively reasoned that these "claims also fail for lack of evidence of causation." Citing deemed admissions eight and nine, the court explained: "The only damages she seeks are $153,000 related to sanctions that were imposed against her resulting from her own conduct, not that of counsel."

imposing the most severe sanction available, she argues, the court offended "the strong policy in favor of resolving disputes on the merits" and violated the precept that "'the court should impose the least severe sanction that is consistent with the purpose of the discovery rules.'" (Quoting *Thomas v. State,* 397 Md. 557, 571 (2007)). Ms. Park also asserts that "[i]n issuing its order, the trial court violated each and every one of the *Taliaferro* factors."[9]

Maryland Rule 2-424(a) permits a party to "serve one or more written requests to any other party for the admission of . . . the truth of any relevant matters of fact set forth in the request." The purpose of that rule "is to 'eliminate from trial those matters over which the parties truly have no dispute[.]'" *Gonzales v. Boas*, 162 Md. App. 344, 360 (quoting *St. James Const. Co. v. Morlock*, 89 Md. App. 217, 230 (1991)), *cert. denied*, 388 Md. 405 (2005). *See also Mullan Contracting Co. v. IBM Corp.*, 220 Md. 248, 260 (1959) ("The

[9] In *Taliaferro v. State*, 295 Md. 376, 390-91 (1983), the Supreme Court of Maryland (at the time named the Court of Appeals of Maryland) set forth the following factors, which trial courts must consider when imposing discovery sanctions:

> whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, the reason, if any, for the violation, the degree of prejudice to the parties respectively offering and opposing the evidence, whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance.

At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

primary function of a request for admissions is to avoid the necessity of preparation, and proof at the trial, of matters which either cannot be or are not disputed.”). Subsection (b) of Rule 2-424 provides, in pertinent part:

> 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 required, whichever is later, the party to whom the request is directed serves a response signed by the party or the party’s attorney.

Md. Rule 2-424(b) (emphasis added). Such deemed admissions are “conclusively established unless the court on motion permits withdrawal or amendment.” Md. Rule 2-424(d).

The fatal flaw in Ms. Park’s argument is that it rests upon the erroneous premise that deemed admissions arising under Maryland Rule 2-424(b) are discovery sanctions imposed by the court in the exercise of its discretion. As is evident from the plain language of Rule 2-424(b), when a party fails to timely respond to an admissions request, the requested admissions are deemed admitted, without more, by operation of law. In other words, Rule 2-424(b) is “self-executing” in the sense that it requires no action by the court. The Supreme Court of Maryland addressed the self-executing nature of deemed admissions in *Att’y Grievance Comm’n v. McCarthy*, 473 Md. 462 (2021). The Court explained:

> Under the plain language of Maryland Rule 2-424(b), each matter referred to in a request for admissions is *automatically* deemed admitted where the party to whom the request is directed misses or ignores the deadline for responding to the request. *There is no need for* the other party to seek, or for *the trial court to issue*, *an order that the matters*

> *referred to in a request for admissions are deemed admitted*. Maryland Rule 2-432, which governs motions to compel and motions for sanctions, and Maryland Rule 2-433, which governs sanctions themselves, do not mention admissions, because no motion for sanctions or court order is necessary for matters referred to in a request for admissions to be deemed admitted.

Id. at 485 (emphasis added). *See also Att'y Grievance Comm'n v. Proctor*, 479 Md. 650, 676 (2022) ("Under . . . Rule [2-424(b)], the requests [for admissions] were automatically deemed admitted due to [the defendant's] failure to timely respond."); *Att'y Grievance Comm'n v. Robertson*, 400 Md. 618, 635 (2007) ("[O]ne may make an admission . . . by default whenever the request for admissions is not timely responded to."); *Att'y Grievance Comm'n v. Kapoor*, 391 Md. 505, 530 (2006) ("Because Respondent did not respond to Petitioner's Request for Admissions of Facts and Genuineness of Documents, each matter of which an admission was requested was deemed admitted and conclusively established as a matter of law.").

AWBF served Ms. Park with its request for admissions on June 25, 2020. When Ms. Park failed to respond by July 28, the matters to which the request referred were deemed admitted by operation of Maryland Rule 2-424(b). *See* Md. Rule 1-203(c) ("Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, three days shall be added to the prescribed period."). Absent the court's approval of a motion to withdraw or amend, those deemed admissions were conclusively established. Accordingly, the court's subsequent order deeming the request for admissions

admitted was unnecessary. In short, the court did not abuse its discretion by ordering "that the Request for Admissions of Fact . . . are deemed admitted" because it had no discretion to abuse.

II.

Relying on our opinion in *Gonzales, supra*, Ms. Park also asserts that the circuit court abused its discretion by denying her motion to withdraw the deemed admissions. AWBF responds that Ms. Park failed to "proffer any evidence to support a contention that there was a substantial dispute as to the admitted fact[s]," as was required for the court to permit the withdrawal of her admissions. Alternatively, AWBF argues that withdrawal of the deemed admissions would have been prejudicial, as it would have delayed the resolution of the case.

Standard of Review

Like other discovery rulings, we review a trial court's grant or denial of a motion to withdraw deemed admissions for abuse of discretion. *See Wilson v. John Crane, Inc.*, 385 Md. 185, 199 (2005). "'An abuse of discretion is present where no reasonable person would take the view adopted by the [trial] court. Thus, where a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal.'" *Gonzales*, 162 Md. App. at 357 (quoting *Doe v. Md. Bd. of Soc. Workers*, 154 Md. App. 520, 528 n.7 (2004)).

Analysis

Maryland Rule 2-424(d) provides parties a means of escaping the otherwise foreclosing effect of untimely responding to a request for admissions, and provides:

> 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 defense on the merits.

Implicit in Rule 2-424(d) "is the requirement that, to be entitled to withdraw an admission, there must exist a substantial dispute concerning the admitted fact." *Harvey v. Williams*, 79 Md. App. 566, 571 (1989).

In assessing whether the withdrawal of a deemed admission would facilitate the presentation of the merits of an action, we consider "[t]he nature of the requests and the practical effect of not permitting withdrawal[.]" *Gonzales*, 162 Md. App. at 360. Notably, eight of Ms. Parks' nine deemed admissions diametrically opposed allegations made in her original complaint.[10] *See* Appendix A to this opinion. The remaining one limited Ms. Park's claimed damages to $153,000 -- the amount of the sanction imposed upon her by the Superior Court of the District of Columbia.

[10] As recounted *supra*, Ms. Park did not file her amended complaint until May 14, 2021, nearly six months after the court denied her motion to withdraw.

The deemed admissions clearly concerned the core issues raised in Ms. Park's counterclaims. Allowing them to stand would -- and did -- hinder the presentation of the merits of her case. Indeed, once the requested admissions were deemed admitted and Ms. Park's motion to withdraw was denied, the court denied Ms. Park's counterclaims, thereby excusing the need for an adjudication on the merits thereof.

As to the second prong, AWBF asserts that the prejudice it would have suffered "was . . . constant delay of this litigation." In the context of the grant or denial of a motion to withdraw or amend, however, "'[p]rejudice requires more than a showing of inconvenience, but, rather, relates to the difficulty which the party will face in proving its case.'" *Gonzales*, 162 Md. App. at 360 (quoting *Harvey*, 79 Md. App. at 572 n.2). Particularly pertinent to this analysis is the proximity of the trial date. *See Wilson*, 385 Md. at 204 ("The proximity of the trial date is of considerable concern when undertaking a prejudice analysis in relation to Rule 2-424(d)"). Where, as here, no trial date has been set, appellate courts have consistently held that there is little likelihood that the withdrawal or amendment of admissions would prejudice the party that requested them.[11] *See In re Cagle*, 585 S.W.3d 618, 624 (Tex. App. 2019); *6750 BMS, LLC v. Drentlau*, 62 N.E.3d 928, 933

[11] On May 30, 2019, the circuit court entered a scheduling order which set a pretrial status hearing for November 8th and provided "the trial date shall be set at the status/pretrial hearing[.]" Before that hearing could be held, however, Ms. Park removed the case to the United States District Court for the District of Maryland. Accordingly, the court canceled the status hearing, and a trial date was not set. On October 24, 2019, the United States District Court entered an order remanding the case to the circuit court. The record does not reflect that during the subsequent proceedings before the circuit court, a trial date was ever scheduled.

(Ohio Ct. App. 2016); *Bates v. Anderson*, 316 P.3d 857, 862 (Mont. 2014); *Herrin v. Blackman,* 89 F.R.D. 622, 624 (W.D. Tenn. 1981), *cited with approval in Wilson*, 385 Md. at 204.

We are persuaded that (i) withdrawal of the deemed admissions would have facilitated the adjudication of the merits in this case and (ii) AWBF failed to demonstrate that withdrawal would "prejudice [it] in maintaining the action or defense on the merits." Md. Rule 2-424(d). Those conclusions do not, however, end our inquiry. As the Supreme Court of Maryland observed in *Wilson*, "while Rule 2-424(d) establishes two prerequisites to *permitting* withdrawal or amendment of admissions, it says nothing about denying motions to withdraw or to amend admissions." 385 Md. at 201 (emphasis retained). Where, as here, the merits and prejudice prongs are satisfied, courts "must consider the culpability of appellant in failing to respond and the egregiousness of her conduct." *Gonzales*, 162 Md. App. at 361.

In analogizing this case to *Gonzales*, Ms. Park focuses exclusively on the merits and prejudice prongs. The critical distinction between *Gonzales* and the instant case, however, lies in the culpability of the respective appellants. In *Gonzales*, the plaintiff filed suit against the defendant, alleging three counts of civil battery. 162 Md. App. at 350. Fewer than two months later, the defendant responded with motions to dismiss and for a more definite statement, as well as discovery requests which included a request for admissions of fact. *Id.* Although plaintiff's counsel prepared a response to the request for admissions, it was inadvertently placed in a file rather than mailed to the defendant. *Id.*

The defendant moved for summary judgment shortly after the 30-day deadline had passed, arguing that the plaintiff's deemed admissions had quelled any dispute of material fact. *Id.* at 351. Upon thus discovering the mistake, plaintiff's counsel promptly served the defendant with an eight-day-late response to the request for admissions, denying them. *Id.* The plaintiff also filed an opposition to the summary judgment motion, arguing that because she had filed a response denying the defendant's admissions request, albeit belatedly, there remained outstanding issues of material fact. *Id.* Alternatively, she sought leave to withdraw the deemed admissions. *Id.* The defendant countered with a motion to strike the plaintiff's untimely responses. *Id.* The circuit court ultimately granted the defendant's motion to strike and entered summary judgment against the plaintiff. *Id.* at 352.

On appeal, we reversed the judgment of the circuit court. After concluding that the merits and prejudice prongs were satisfied, we reached the issue of the plaintiff's culpability, reasoning:

> [A]ppellant's conduct in the instant case was not egregious. Counsel represented that he accidentally filed appellant's response instead of mailing it. Appellant's response was served on appellee eight days after the deadline, as soon as counsel realized his mistake, and all of this occurred at the very beginning of the litigation process. In addition, there may have been some confusion stemming from the fact that the circuit court dismissed appellant's initial complaint, with leave to amend, and did not rule on appellee's motion to strike even though it was pending at that time.[12] Despite the fact that

[12] In *Gonzales*, the circuit court dismissed the plaintiff's initial complaint with leave to amend. The plaintiff apparently labored under the mistaken impression that, as a result,

> appellant's conduct was not egregious, the punishment was extraordinarily severe, as all the requests were deemed admitted, and summary judgment was granted in appellee's favor.

Id. at 362. After articulating our "very fact dependent" holding, *id.* at 350, we concluded with some words of cautionary dicta, writing, in part:

> 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.
>
> * * *
>
> There have been instances, however, including several in reported cases, 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 wilful, 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

---

her amended complaint constituted the initial pleading in the case, thereby affording her 15 days from the filing of that amended complaint to respond to the defendant's request for admissions. *See* Md. Rule 2-424(b) ("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 required*, whichever is later, the party to whom the request is directed serves a response signed by the party or the party's attorney."). On appeal, we held that the plaintiff's argument was without merit, reasoning that "such a filing does not start the running of time anew for purposes of a response to a request for admission." 162 Md. App. at 355. Although erroneous, the plaintiff's misinterpretation of Rule 2-424(b) nevertheless informed our analysis of her culpability with respect to the belated response to the defendant's admissions request. No such reasonable misinterpretation is here at issue.

> heavier sanction, denies justice. Litigation is a dispute resolution process, not a game. Ordinarily, a trial court's exercise of discretion, including when it literally applies the Rules, will be accorded great deference and upheld.

Id. at 363.

In contrast to the clerical oversight at issue in *Gonzales*, Ms. Park was clearly cognizant of the fact that she had not timely responded to discovery, attributing her belated response to AWBF's admissions request to her ignorance of the discovery rules. Specifically, in her motion to withdraw, Ms. Park asserted:

> Defendant did not realize that the Request for Admissions of Fact was treated differently timewise and in purpose from the other two documents, i.e., Interrogatories and Request for Production of Documents, as she thought that they were all discovery requests. She had no prior experience receiving and handling such a document as Request for Admissions of Fact.

The admissions request itself, however, expressly advised Ms. Park that "[t]he matters requested below are admitted unless, within 30 days after service of these Requests, [Ms. Park] serves upon [AWBF], a written answer or objection addressed to the matter[.]" *See Steffan v. Steffan*, 29 S.W.3d 627, 631 (Tex. App. 2000) (holding that the *pro se* defendant's alleged ignorance of the law did not constitute good cause warranting the withdrawal of deemed admissions where "the requests for admission had the legal consequences of non-compliance written on their face[.]"). The request for admissions also cites to Maryland Rule 2-424, reference to which would have immediately confirmed AWBF's representation. In its motion to compel discovery, moreover, AWBF explicitly

asked the court to "order that the Request for Admissions of Facts be deemed admitted since no response was filed in a timely manner." In her opposition to that motion, however, Ms. Park made no mention of the admissions request. Finally, Ms. Park's excuse is belied by a pattern of belated conduct and failure to comply with discovery.

We are, of course, mindful that Ms. Park was a *pro se* litigant. That status does not, however, relieve her of the obligation to comply with the rules of discovery or excuse her failure to exercise due diligence. *See Tretick v. Layman*, 95 Md. App. 62, 68 (1993) ("The principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident."). On these facts, therefore, we hold that the court's denial of Ms. Park's motion to withdraw admissions was neither well removed from any center mark imagined nor beyond the fringe of what is minimally acceptable.

III.

Finally, Ms. Park challenges the court's grant of summary judgment against her, arguing that the court erroneously found that she "had put forth 'no evidence' in support of her counterclaims."[13] Specifically, she claims that the court erroneously disregarded an affidavit accompanying her opposition to summary judgment, "Bar complaints" that she submitted and reports responding thereto, as well as her answers to AWBF's

[13] We note at the outset that Ms. Park does not specify which of her counterclaims against AWBF she contends should have survived summary judgment, nor does she identify or discuss the elements thereof.

interrogatories. Those documents, Ms. Park concludes, provided “ample support” for her counterclaims.

Maryland Rule 2-501(f) governs motions for summary judgment and provides: “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.” The moving party bears the initial burden of “identify[ing] portions of the record that demonstrate absence of a genuine issue of material fact.” *Nerenberg v. RICA of S. Md.*, 131 Md. App. 646, 660, *cert. denied*, 360 Md. 275 (2000). Once the movant has done so, the burden shifts to the nonmoving party, who must “identify with particularity each material fact as to which it is contended that there is a genuine dispute and to specify the evidence that demonstrates the dispute.” *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 194 (quotation marks and citation omitted), *cert. denied*, 444 Md. 641 (2015). To survive a summary judgment motion, therefore, a claimant “must show evidence on each element that is sufficient to permit a trier of fact to find in his or her favor.” *Gambrill v. Bd. of Edu. of Dorchester Cnty.*, 481 Md. 274, 314 (2022). “Neither general allegations of facts in dispute nor a mere scintilla of evidence will suffice[.]” *Nerenberg*, 131 Md. App. at 660 (quotation marks and citation omitted). Rather, to defeat a motion for summary judgment, “the non-moving party must provide detailed and precise facts that are admissible in evidence.” *Appiah v. Hall*, 416 Md. 533, 546 (2010).

Whether a court properly granted summary judgment is a question of law, which we review *de novo*. *See Webb v. Giant of Md., LLC*, 477 Md. 121, 135 (2021) ("With respect to the trial court's grant of a motion for summary judgment, the standard of review is *de novo*." (Quotation marks and citation omitted)). "When reviewing the record to determine whether a genuine dispute of material fact exists, we construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party." *Appiah*, 416 Md. at 546 (cleaned up).

"In determining the existence of a factual dispute, '[i]nitially, we need to determine the record that may properly be considered on [a] summary judgment motion.'" *Zilichikhis*, 223 Md. App. at 179 (quoting *Imbraguglio v. Great Atl. & Pac. Tea Co., Inc.*, 358 Md. 194, 201 (2000)). To demonstrate the existence of a genuine dispute of material fact, a nonmoving party must produce "factual assertions, under oath, based on the *personal knowledge* of the one swearing out an affidavit, giving a deposition, or answering interrogatories." *Id.* at 179 (quotation marks, citations, and some emphasis omitted).

Among the exhibits accompanying AWBF's April 5 motion for summary judgment was a copy of its request for admissions which were deemed admitted by operation of Maryland Rule 2-424(b) when Ms. Park failed to timely respond thereto. As discussed *supra*, those admissions contravened the allegations set forth in Ms. Park's complaint, thereby demonstrating an absence of a genuine dispute of material fact and shifting the burden to Ms. Park to show that an issue of material fact remained. Those deemed

admissions were unequivocally corroborated and elaborated upon by Mr. Bender's affidavit.

Ms. Park claims that her interrogatory answers sufficed to meet her burden by "provid[ing] a detailed description of Mr. Bender's misconduct[.]" We disagree. Those answers concluded with an affirmation "that the contents of the foregoing answers are true to the best of my knowledge, information, and belief." Because Ms. Park's interrogatory answers were "were made 'to the best of [her] information, knowledge and belief,' rather than on the basis of [her] personal knowledge," they did not suffice to generate a genuine dispute of material fact. *104 W. Washington St. II Corp. v. City of Hagerstown*, 173 Md. App. 553, 573, *cert denied*, 400 Md. 647 (2007). *See also Zilichikhis*, 223 Md. App. at 180 ("On its face, this affirmation, on 'knowledge, information and belief,' does not generate a genuine issue of fact." (Citation omitted)).

Ms. Park's correspondence with the Maryland Attorney Grievance Commission and the District of Columbia Office of Disciplinary Counsel fair no better. Ms. Park's allegations of attorney misconduct contained therein consisted of mere unsworn allegations and inadmissible hearsay. As such, the court could not properly consider them when making its ruling on AWBF's motion for summary judgment. In their responsory letters, moreover, the Maryland Attorney Grievance Commission and the District of Columbia Office of Disciplinary Counsel dismissed Ms. Park's allegations against Mr. Bender. As those findings were consistent with AWBF's motion for summary judgment and the deemed admissions in support thereof, those exhibits did not and could not demonstrate

the existence of a genuine dispute of material fact. *See Jones v. Mid-Atl. Funding Co*., 362 Md. 661, 675 (2001) ("'A material fact is a fact the resolution of which will somehow affect the outcome of the case.'" (Quoting *King v. Bankerd*, 303 Md. 98, 111 (1985))).

The sole remaining evidence in support of Ms. Park's opposition is a self-serving affidavit appended thereto. Ms. Park's seven-page affidavit contained 23 numbered paragraphs, 14 of which set forth undisputed facts. Of the remaining nine, eight recounted Ms. Park's attempts to obtain the trial exhibits introduced in the Sexual Assault Case, as well as the corresponding case file, purportedly resulting in the dismissal of Ms. Park's appeal of the judgments entered therein. Critically, the averments set forth in the affidavit recounted events that transpired *after* AWBF had withdrawn from representation of Ms. Park. They did not, therefore, support the allegations in Ms. Park's complaint, nor did they address -- much less rebut -- the facts asserted in AWBF's motion for summary judgment or the deemed admissions in support thereof. Ms. Park, therefore, failed to present any evidence of a genuine dispute of material fact. As she does not challenge the court's application of the law to those facts, we perceive no error in the court's grant of summary judgment against Ms. Park.

We, therefore, affirm the judgment of the circuit court.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

Appendix A

	Requested/Deemed Admissions		**Counterclaim**
Request No. 1	"That [Ms. Park] never instructed Bruce M. Bender or [AWBF] to amend your Complaint to include a claim for intentional and negligent misrepresentation[s] against [M.B.]"	Complaint ¶ 9	"[AWBF] failed to amend the complaint against [M.B.] to include claims for intentional and negligent misrepresentations"
Request No. 2	"That [M.B.] did not make any intentional and/or negligent misrepresentations to [Ms. Park] that caused [her] damages."	Complaint ¶ 9	"[AWBF] failed to amend the complaint against [M.B.] to include claims for intentional and negligent misrepresentations"
Request No. 3	"That Mr. Bender and [AWBF] hired two separate computer forensic expert witnesses, John Conroy and Brian Halpin, to address the issue of the authenticity of email and chat communications that [M.B.] produced."	Complaint ¶ 11	"[AWBF] failed to timely identify and/or employ an expert to address the authenticity of certain alleged email and chat communications that [M.B.] produced"
Request No. 4	"That both Mr. Conroy and Mr. Halpin determined that all email and chat communications that [M.B.] produced were authentic."	Complaint ¶ 10	"[AWBF] failed [to] timely address the issue regarding the authenticity of certain alleged email and chat communications that [M.B.] produced."
Request No. 5	"That Mr. Bender and [AWBF] spent over 30 hours preparing [Ms. Park] for your trial testimony and had multiple meetings in his office."	Complaint ¶ 12	"[AWBF] failed to properly prepare and advise Ms. Park regarding her testimony relating to certain alleged email and chat communications [M.B.] produced."

		Complaint ¶ 14	"[AWBF] failed to properly prepare and advise Ms. Park about her testimony regarding her complaints filed with the World Bank."
Request No. 6	"That Mr. Bender advised [Ms. Park] to tell the truth relating to all email and chat communications [M.B.] produced."	Complaint ¶ 13	"[AWBF] instructed her to provide false testimony relating to certain alleged email and chat communications [M.B.] produced."
Request No. 7	"That [Ms. Park] reviewed all documents that were submitted as exhibits, including your entire medical chart."	Complaint ¶ 17	"[AWBF] altered Ms. Park's medical chart without her knowledge."
Request No. 9	"That all sanctions assessed against [Ms. Park] by the trial judge in the case of Park v. [M.B.] w[ere] because of your own conduct and not because of any conduct of Mr. Bruce Bender or [AWBF]."	Complaint ¶ 18	"[AWBF] litigated Ms. Park's matter in a way which subjected her to sanctions in the amount of $153,000."