Circuit Court for Montgomery County
Case No. 414826V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1525

September Term, 2017

ROXANNE MOLINA, *et al.*

v.

ERIC TOOMBS, *et al.*

Wright,
Arthur,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: October 15, 2018

This appeal concerns a discovery dispute that arose after the parties agreed to settle the case. The plaintiffs claim to have served notices of deposition and subpoenas on two out-of-state insurers that were not parties to the case. The insurers did not send representatives to testify at depositions in Maryland or at a circuit court hearing. The plaintiffs filed petitions to have the insurers held in constructive civil contempt, but the clerk rejected the petitions because they did not include the required filing fee. On appeal, the plaintiffs contend that the Circuit Court for Montgomery County erred by denying a post-judgment motion to accept the contempt petitions for filing retroactively or, in the alternative, to vacate the judgment and reopen the case so that the plaintiffs could file new petitions.

For the reasons explained in this opinion, we determine that this Court lacks jurisdiction to review the decision terminating the contempt proceedings. Although the appeal is timely as to the denial of the motion to vacate the underlying judgment, we conclude that the circuit court was not required to reopen the case against the defendants.

BACKGROUND

A. The Negligence Action and Settlement Agreement

On February 9, 2016, Roxanna Molina[1] and her minor daughter filed a complaint in the Circuit Court for Montgomery County. They alleged that Ms. Molina's daughter had sustained serious injuries in an automobile accident. According to the complaint,

[1] On appeal, Ms. Molina is identified as "Roxanne Molina." In the circuit court, she was identified as "Roxanna Molina." Some documents refer to "Roxina Molina."

Ms. Molina's daughter was a passenger in a vehicle owned by Dwala Toombs and driven by Ms. Toombs's son. The Molinas alleged that the accident resulted from negligent driving of Ms. Toombs's son and from Ms. Toombs's negligent entrustment of the vehicle to her son.

The court issued a scheduling order establishing January 24, 2017, as the deadline for completing discovery.

Just after the close of discovery, the parties agreed to settle the case for $250,000. Counsel for the Toombses represented that $250,000 was the maximum amount available under the Toombses' automobile insurance policy and that no other insurance coverage existed.

On February 17, 2017, the court issued an order staying the case and informing the parties that the court would dismiss it without prejudice unless the parties filed a joint line of dismissal within 30 days. On March 21, 2017, after the 30-day stay had ended, the court issued a notice of dismissal and informed the parties that they had another 30 days in which to move to vacate the dismissal.

B. Cross-Motions to Enforce the Settlement Agreement

On April 20, 2017, 30 days after the clerk issued the notice of dismissal, the Molinas filed a motion asking the court to vacate the dismissal and to enforce the settlement agreement. Counsel for the Molinas asserted that he had negotiated settlement terms with an insurance adjuster for "CSAA insurance company" and that counsel for the Toombses had "thwarted" the settlement by insisting that the release include "unusual"

and "[]burdensome" clauses not found in a standard release. The Molinas asked the court to order immediate payment of $250,000, in exchange for dismissing the claims against the Toombses, and to reopen the case to permit them to pursue a new claim for "extra-contractual damages, to be paid by CSAA."[2]

The Toombses opposed the Molinas' motion and made their own cross-motion to enforce the settlement agreement. They argued that the concerns expressed by the Molinas were based on "unreasonable interpretations" of "standard provisions" in the proposed release. The Toombses asked the court to compel the Molinas to execute the release.

The court scheduled a 30-minute hearing for the cross-motions to enforce the settlement on June 1, 2017. Although the record includes no transcript of that hearing, other documents suggest that counsel for the Molinas did not arrive on time because he was in trial in another courtroom. The documents also suggest that counsel for the Molinas may not have informed his opposing counsel of the scheduling conflict. When he arrived hours after the scheduled start time, counsel for the Toombses, who had driven from central Baltimore County to Rockville for the hearing, refused to consent to a postponement. The court denied the Molinas' motion to enforce the settlement and scheduled a new hearing for the Toombses' cross-motion to enforce the settlement on

[2] The motion did not specify the nature of the "extra-contractual damages" that the Molinas hoped to recover because of the alleged misconduct of someone else's insurer.

June 27, 2017.[3]

Meanwhile, on May 10, 2017, the Molinas had executed a release on a form issued by CSAA Affinity Insurance Company and the American Automobile Association (AAA). The Molinas agreed to accept $250,000 in full settlement of any claims against the Toombses or their insurers. In exchange, the Molinas agreed to release their claims against the Toombses and others, including the Toombses' insurers. Counsel for the Molinas sent the signed release directly to the CSAA adjuster, apparently without informing counsel for the Toombses.

C. The Molinas' Efforts to Obtain Post-Settlement Discovery

On Wednesday, June 14, 2017, less than two weeks before the hearing on the Toombses' motion to enforce the settlement, the Molinas' attorney released a deluge of discovery materials directed at CSAA and other out-of-state insurance companies.

Counsel for the Molinas sent notice to the Toombses that he had scheduled oral depositions of the "designated representatives" of five entities: "Keystone Insurance Company," "CSAA Infinity Insurance," "CSAA Insurance Group," "Accident Fund Insurance Co. of America," and "American Automobile Association." The notice stated that all five depositions would occur, one after another, in the law library at the Circuit Court for Montgomery County throughout the morning and afternoon of Monday, June

[3] The Molinas assert that the circuit court "reset the matter for an evidentiary hearing" on June 27, 2017. In support, they cite their own attorney's after-the-fact characterizations of the hearing as an "evidentiary hearing." Aside from counsel's *ipse dixit*, the record includes no support for the assertion that the court intended to receive evidence at the June 27 hearing.

26, 2017 (i.e., one day before the hearing on the pending motion to enforce the settlement).

The deposition notice stated that each corporation was required to designate as its representative the person "with the most knowledge" of over a dozen broad categories of information. The topics included: the settlement of the claims against the Toombses; release forms used by "Keystone and/or CSAA"; certain claims against "Keystone or CSAA" for alleged misconduct related to a settlement; certain communications with counsel for the Toombses; and general information about each of the five companies.

Although the record is incomplete, it appears that counsel for the Molinas attempted to serve subpoenas on the out-of-state insurance companies 13 days before the depositions that he scheduled. He claims to have served a subpoena on "CSAA Affinity Insurance Group" at the address of the Maryland Insurance Administration. He claims to have served a subpoena on American Automobile Association (AAA) at the address of its resident agent. The subpoenas purported to compel each company's representative to attend the depositions in Montgomery County on June 26, 2017, and to attend the hearing on the following day. The record contains no returns of service, but counsel told us at oral argument that the notices and subpoenas had been hand-delivered to their respective recipients.[4]

[4] In light of our disposition of the case, it is unnecessary to resolve questions of the sufficiency of service on the out-of-state companies. We are, however, unaware of any principle of law under which a person may compel an out-of-state company to designate representatives to travel to Maryland and to appear at a deposition or hearing merely by serving a Maryland subpoena on the Insurance Commissioner or a resident agent. The

The Toombses moved to quash the Molinas' notice of oral depositions. They argued: that these new discovery materials were untimely because months had passed since the deadline for the close of discovery; that the deposition notices sought information that was irrelevant to the action and beyond the permissible scope of discovery; and that the subpoenas were defective because the deponents were out-of-state corporations not subject to Maryland's subpoena power. They also asserted that the Molinas' counsel had violated professional norms by scheduling the depositions without consulting with opposing counsel.[5]

reporters of the Maryland Rules have expressed doubt about whether Md. Rule 2-510, concerning subpoenas, would extend that far. Paul V. Niemeyer, Linda M. Schuett, and Joyce E. Smithey, *Maryland Rules Commentary* 525 (4th ed. 2014). Under Md. Code (1995, 2017 Repl. Vol.), § 4-107(a) of the Insurance Article, "each insurer applying for a certificate of authority must appoint the [Insurance] Commissioner as attorney for service of process issued against the insurer in the State," but that provision has never been interpreted to apply to a deposition or a hearing subpoena, as opposed to a summons that accompanies an initial pleading. Furthermore, when a person serves an out-of-state company by serving a summons and a complaint on the Insurance Commissioner, the company has 60 days after service in which to respond. Md. Rule 2-321(b)(3). Even if a person served an out-of-state company by serving a summons and a complaint on its resident agent in Maryland, the company would still have 30 days after service to respond. Md. Rule 2-321(a). In this case, by contrast, the Molinas purported to require the out-of-state insurers to designate witnesses and send them to Maryland within 12 calendar days (and only eight business days) after the notices and subpoenas were drafted.

[5] In a supplemental filing in support of the motion to quash, the Toombses also contended that the subpoenas were defective because at least one subpoena purported to require the deponent to produce documents at the hearing, even though it had not been served at least 30 days before the date of the deposition. Their contention has at least two problems. First, the record and the appendix to their brief contain only one deposition subpoena (to CSAA), and it does not request the production of documents. Second, although the record extract contains a hearing subpoena (to AAA) that requests the production of documents, Md. Rule 2-510, which governs subpoenas, does not give a

No witnesses appeared for the depositions.

On the following day, June 27, 2017, the circuit court commenced the hearing on the Toombses' motion to enforce the settlement. The docket entries show that counsel for the Toombses tendered the settlement check to a representative of the Molinas at the hearing. The court continued the hearing until two days later and, in the meantime, ordered the Molinas not to negotiate the check.

The record includes no transcript from the first day of the hearing, but it does include a transcript of the latter portion of the hearing on June 29, 2017. During that hearing, it was undisputed that the Molinas had already received the check for $250,000 and had already released their claims against the Toombses. Counsel for the Toombses announced that his clients had no objection to the Molinas negotiating the settlement check. Counsel for the Molinas voiced his "suspicions" about representations made by opposing counsel about the limit on the Toombses' insurance coverage,[6] but he

subpoenaed person 30 days to produce documents. *Compare* Md. Rule 2-412(c) (stating that "[i]f a subpoena requiring the production of documents or other tangible things at the taking of the deposition is to be served on a . . . nonparty deponent, . . . the subpoena shall be served at least 30 days before the date of the deposition"). The only express temporal limitation in Rule 2-510 is in paragraph (c), which states that, "[u]nless impracticable, a party shall make a good faith effort to cause a trial or hearing subpoena to be served at least five days before the trial or hearing." Of course, Rule 2-510(h) does require "[a] party or an attorney responsible for the issuance and service of a subpoena" to "take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena."

[6] Some of the "suspicions" evidently had to do with Keystone's status: in answers to interrogatories, the Toombses had identified Keystone as their insurer, but in 2017 Keystone was not licensed to do business in Maryland. The answer to the mystery of Keystone's status was a matter of public record: Keystone is the previous name of CSAA

announced that the Molinas were "prepared" for the defendants "to be dismissed from the action." Based on that information, the court determined that the Toombses were entitled to have all claims dismissed with prejudice and that the Molinas were entitled to negotiate the check.

On the same day as the hearing, the clerk made docket entries stating that the court had granted the Toombses' motion to enforce the settlement agreement and dismissed with prejudice the claims against the Toombses. The clerk signed and docketed a notice of dismissal to reflect the court's ruling. The notice informed the parties that they could move to vacate the dismissal order within 30 days.

D. The Molinas' Attempt to Initiate Contempt Proceedings

During the hearing on June 29, 2017, counsel for the Molinas told the court that the Molinas had "filed" petitions for constructive civil contempt "against CSAA Affinity Insurance Company, and against American Automobile Association, Inc." Counsel indicated that, in the contempt proceedings, his clients would allege that those two companies failed to obey subpoenas to appear for the June 26 depositions and for the June 27 hearing. Counsel told the court that the Molinas had submitted the petitions in the court's after-hours drop box on the night before the hearing "to make sure" that those filings "preceded" the hearing.

Affinity Insurance Company. *See* Maryland Insurance Administration, Company Information: CSAA Affinity Insurance Company, https://perma.cc/3T74-7UW5 (last visited Oct. 11, 2018). In other words, Keystone and CSAA Affinity Insurance Company are the same thing.

On the same day as the hearing, however, the clerk of the circuit court returned the two documents that the Molinas had attempted to file. The clerk sent a notice stating that documents were being returned because "[c]osts [were] not enclosed" with the submission.[7] The clerk wrote that the "filing fee" for contempt petitions was "$31.00 per request" and that the "Amount Due" was $62.00. The Molinas did not pay the fees until a few weeks later.

On July 26, 2017, the Molinas filed a motion asking the court to "accept filing" of the two contempt petitions, *nunc pro tunc*. Specifically, the Molinas asked the court to issue an order "accepting the Petitions as filed on June 28, 2017," the date on which they claimed to have submitted the petitions. They argued that the clerk was required to file the petitions on the date that the clerk received them, even in the absence of a filing fee.

The exhibits to the motion included the clerk's notice for two documents that were returned on June 29, 2017, and a receipt for filing fees paid on July 10, 2017. The exhibits did not include the actual contempt petitions that the clerk had returned or even a copy of those petitions. Consequently, the court itself never received the petitions, and those petitions are not part of the record transmitted to this Court.

In support of the motion for an order requiring the clerk to accept the petitions for filing *nunc pro tunc*, counsel for the Molinas made unsworn assertions about how the clerk's office had handled the petitions. Counsel asserted that the contempt petitions had

[7] The clerk did not check a box on the form that would indicate that the documents lacked a certificate of service.

been "filed in the drop-box on June 28, 2017," and that those petitions "contained Certificates of Service reflecting June 28, 2017 as well." Counsel further asserted that, once the filing fees were paid, someone at the clerk's office "advised that the Petitions [could] not be accepted without an Order, as the matter [was] now listed as closed on the docket." Even though these facts were not established in the record, counsel did not set forth those facts in a supporting affidavit, as required by Md. Rule 2-311(d).

In their motion, the Molinas also suggested, without elaboration, that, as a "practical" alternative to filing the petitions *nunc pro tunc*, the court should vacate the dismissal order and reopen the case so that they could file new petitions. They said that, after vacating the dismissal order, the dismissal could be "reinstated" so that the Toombses would "be dismissed again[.]"

The Toombses filed a response and opposed the request to order the retroactive filing of the contempt petitions. The Toombses argued that the court should not permit the Molinas to file the contempt petitions because, in their view, the petitions were "frivolous on their face." In addition to their arguments about alleged defects in the subpoenas to the insurance companies, the Toombses argued that the Molinas lacked "standing" to seek to hold the insurers in contempt because the Molinas had signed a general release. The Toombses further argued that, even if the court could accept the contempt petitions, the contempt proceedings should not affect their "status as parties previously and properly dismissed with prejudice[.]"

No party requested a hearing on the Molinas' motion. On September 1, 2017, the

circuit court entered a written order denying the motion to accept the filing of the petitions or alternatively to vacate the order of dismissal. Within 30 days after the entry of that order, the Molinas filed a notice of appeal.

E. Proceedings in this Court

Before discussing the substance of this appeal, we will comment on a few preliminary matters regarding the parties' submissions to this Court.

The Molinas seek the reversal of the order denying their motion to accept the filing of the contempt petitions or, alternatively, to vacate the order of dismissal. By its nature, the appeal implicates the rights of the defendants in the negligence action (the Toombses) and the rights of the alleged contemnors (CSAA and AAA). The cover page of the Molinas' appellate brief identified the appellees as Toombs "et al." The certificate of service in the Molinas' brief stated that they mailed copies of their brief not only to the Toombses, through their counsel of record, but also to CSAA and AAA, at the address of the Maryland Insurance Administration.

The Toombses, through counsel, submitted an appellees' brief asking this Court to uphold the circuit court's rulings. No attorney entered an appearance on behalf of CSAA or AAA, and no brief was filed on behalf of either company.

The Molinas moved to strike the Toombses' brief. In addition to a few allegations about the format and contents of the brief, the Molinas asserted that "[t]he Appellees in this action are CSAA Infinity [sic] Insurance Company and American Automobile Association." The Molinas argued that the Toombses' counsel of record had "filed and

signed a 'Brief of Appellees' which appears to discard" the interests of his clients "while advocating for the insurer(s)[.]" This Court denied the Molinas' motion to strike without setting forth its reasoning in the order.

In our assessment, the accusation that the appellees' brief "appears to discard" the Toombses' interests is meritless. We agree with the Toombses that they "have both an interest in and right to enforce the terms of the settlement agreement[.]" Just as the Toombses were entitled to seek dismissal of the claims against them, they were entitled to oppose the motion to vacate the dismissal order. Likewise, the Toombses are entitled to ask this Court to uphold that ruling on appeal. The arguments in the Toombses' brief properly advance their interest in preserving a judgment in their favor, and thereby ending the litigation once and for all, as they bargained for in the settlement.

The next preliminary matter is the parties' dispute over contents of the record extract. In their appellate brief, the Toombses argued that the Molinas had failed to comply with the rules governing the designation of materials for the record extract. As the appellants, the Molinas had a duty to "prepare and file a record extract" (Md. Rule 8-501(a)), containing "all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal[.]" Md. Rule 8-501(c). The parties are required to communicate with one another in deciding what materials should be included in the record extract. *See* Md. Rule 8-501(d) ("[w]henever possible, the parties shall agree on the parts of the record to be included in the record extract"). If the parties are unable to agree, they must follow the detailed procedures set forth in Rule 8-

501(d)(1) through (4) to address the disagreement. "If the record extract does not contain a part of the record that the appellee believes is material, the appellee may reproduce that part of the record as an appendix to the appellee's brief together with a statement of the reasons for the additional part." Md. Rule 8-501(e).

In the introduction of the appellees' brief, the Toombses notified this Court that that the Molinas "made no effort to contact" them "to determine what should be included in the Record Extract[.]" The Toombses asserted that the Molinas "provided a sparse, incomplete and one-sided Record Extract, selectively choosing only those filings that support their skewed narrative[.]" Accordingly, the Toombses supplied an appendix to their brief, which included the Toombses' motions, responses, and exhibits, all of which the Molinas had omitted from their record extract.

Although the Molinas responded with a motion to strike and a reply brief, they did not contest the allegations that they had failed to communicate with opposing counsel. The Molinas nevertheless argued that the Toombses could not "simply attach over a hundred pages of documents to the Brief without an accompanying statement of the reasons for the additional part." In response, the Toombses pointed out that they had, in fact, stated the reasons for their appendix succinctly in the introduction to their brief, when they characterized the record extract as "incomplete and one-sided[.]"

Having reviewed the appellees' brief and appendix, we conclude that the Toombses substantially complied with Rule 8-501(e). That provision does not require an appellee to list the "statement of reasons" under a separate heading. Furthermore, the

reasons stated by the Toombses are persuasive. The materials in the Toombses' appendix are reasonably necessary to the determination of the questions presented in the appeal. Most notably, the appendix included copies of the actual deposition notices and subpoenas to CSAA and AAA. Without those materials, it would have been exceedingly difficult for this Court to understand and to evaluate the discovery dispute that led to this appeal.

We agree that the Molinas failed to meet their obligations under Rule 8-501 and that this failure made it necessary for the Toombses to produce an appendix. Consequently, we shall assess the costs associated with the creation of that appendix to the Molinas. *See McAllister v. McAllister*, 218 Md. App. 386, 399 (2014); *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007); *Reed v. Baltimore Life Ins. Co.*, 127 Md. App. 536, 547 (1999).

Perhaps unintentionally, the Molinas' insistence that CSAA and AAA are the only proper appellees exposes a more fundamental problem with their appeal. Although their appeal threatens to adversely affect the two insurance companies, the record does not show that those companies ever became parties to any proceedings in the circuit court. The circuit court's docket does not list either CSAA or AAA as a party. The court never docketed the contempt petitions, and it never issued a show-cause order to be served on the alleged contemnors under Md. Rule 15-206(d). As mentioned previously, the record does not include a copy of the petitions that the Molinas claim to have filed. Indeed, the record does not even include a return of service for the subpoenas that the Molinas claim

to have served. As a whole, the record fails to inspire confidence that CSAA and AAA were ever served with process in a contempt case.

The Molinas represent to this Court that they mailed copies of their appellate briefs to both CSAA and AAA at the address of the Maryland Insurance Administration. They tell us that the Insurance Commissioner is authorized to accept service of process issued against an insurer doing business in this State under section 4-107 of the Insurance Article of the Maryland Code. Of course, serving a copy of an appellate brief is not equivalent to service of original process. It would be problematic for this Court to adjudicate rights of CSAA and AAA without knowledge that CSAA and AAA had proper notice and an opportunity to assert their rights.

Ultimately, these questions regarding the status of the alleged contemnors are academic. For the independent reasons explained below, we conclude that the Molinas have no right to complain on appeal that the court prevented them from seeking to hold CSAA and AAA in contempt.

DISCUSSION

Although this case began as an automobile negligence action, the Molinas have not appealed from the order dismissing that action. Nor have the Molinas challenged the rulings that resulted in the dismissal. They make no argument, for instance, that the circuit court erred when it dismissed the negligence claims based on the undisputed representations that the parties had reached a settlement agreement, that the Molinas had signed a release, and that the Toombses had paid the full settlement amount.

Instead, the Molinas appealed from the order denying a motion filed within the 30-day period after the court rendered judgment in the negligence action. The Molinas take issue with the handling of the petitions seeking to initiate contempt proceedings against two non-party witnesses. As phrased by the Molinas, the "primary issue" in this appeal is whether the clerk "improperly failed to accept" the contempt petitions for filing and whether the court "erred in subsequently failing to allow the [p]etitions to be docketed." The Molinas' brief presents the following two questions:

> A. Did the Circuit Court improperly return the Petitions for Contempt and close the file?
>
> B. Did the Circuit Court err and/or abuse its discretion in denying Plaintiffs' Motion to Accept Filing of Petitions for Contempt *Nunc Pro Tunc*, or in the alternative, to Vacate Order of Dismissal to Reopen Action/Revise Order of Dismissal and Allow Petitions for Contempt and Motion to Quash to be Adjudicated?

The Molinas contend that the clerk of the circuit court had no authority to reject their contempt petitions based on the absence of a filing fee. They rely on *Bond v. Slavin*, 157 Md. App. 340, 350-53 (2004), in which this Court held that a clerk was required to file a document on the date that the clerk received it even though the party did not pay the filing fee until several weeks later. The Court explained that the "'only authority that a clerk has to refuse to accept and file a paper presented for filing'" is the clerk's duty under Rule 1-323 not to accept a filing that lacks proof of service. *Id.* at 351 (quoting *Director of Fin. v. Harris*, 90 Md. App. 506, 511 (1992)). The Molinas contend that the correct filing date for their contempt petitions is the date on which the clerk received the petitions, not the later date on which the clerk received the filing fee.

The Molinas further contend that the circuit court should have corrected the clerk's error once they informed the court that the clerk had improperly refused to accept their petitions, based on the absence of the filing fee. The Molinas cite *Cave v. Elliott*, 190 Md. App. 65 (2010), in which this Court held that a circuit court acted appropriately in granting a motion to accept a document for filing, *nunc pro tunc*, as of the date the clerk actually received it, after the clerk had improperly rejected the document for filing. *Id.* at 75-79.[8]

The Toombses acknowledge that "the Clerk should have accepted the Petitions for Contempt as 'filed' when they were submitted without the appropriate payment, and then should have docketed [the petitions] when payment was received." The Toombses nevertheless contend that "the Circuit Court was within its discretion in denying the *nunc pro tunc* motion, as there was no legitimate basis to support the Petitions for Contempt." They argue that any error was "harmless" because the contempt petitions rested on what they characterize as "clearly improper use of Maryland subpoenas."

It is readily apparent that the questions presented have only a tangential connection to the dismissal of the negligence action. The focus is on whether the Molinas should be permitted to proceed on petitions for contempt against parties other than the Toombses: CSAA and AAA. Before we attempt to address this unusual appellate challenge, we have an obligation to ensure that this appeal is properly before us.

[8] The Molinas' brief includes a lengthy quotation from *Cave v. Elliott*, citing cases regarding the court's power to issue orders *nunc pro tunc*. The Molinas did not cite any of these authorities in their motion to the circuit court.

See Stevens v. Tokuda, 216 Md. App. 155, 165 (2014) (stating that "[e]ven if no party challenges the appealability of an order, appealability is a jurisdictional issue that we must resolve *sua sponte*"). The right of appeal in this State exists only where it is constitutionally authorized or where the legislature has expressly granted it. *See Pack Shack, Inc. v. Howard County*, 371 Md. 243, 247-49 & n.3 (2002).

The Maryland Rules permit a "party to an action in which an alleged contempt occurred" to "initiate a proceeding for constructive civil contempt by filing a petition with the court against which the contempt was allegedly committed." Md. Rule 15-206(b)(2). A proceeding for constructive civil contempt must be "included in the action in which the alleged contempt occurred." Md. Rule 15-206(a). Yet even though a contempt case "'may grow out of or be associated with another proceeding,'" it "'is ordinarily regarded as a collateral or separate action from the underlying case and as separately appealable, with appellate review normally limited to the contempt order itself.'" *Stevens v. Tokuda*, 216 Md. App. at 165 (quoting *Blake v. Blake*, 341 Md. 326, 332 (1996)) (further quotation marks and citations omitted).

At common law, parties had no right to appeal either "from a finding of contempt or a refusal to find contempt[.]" *Tyler v. Baltimore County*, 256 Md. 64, 69 (1969). The main justification for denying appellate review was that "the power to punish for contempt was so absolutely essential to the functioning and, indeed, the existence of courts that to be effectual the power must be instantly available and inevitable to the point of not being subject to change." *Id.* The General Assembly eventually relaxed this

principle by enacting statutes granting a right of appeal "to those adjudged in contempt," but "not to those who unsuccessfully seek to have another held to be contemptuous." *Id.* at 70-71 (interpreting Md. Code (1957, 1968 Repl. Vol), Art. 5, §§ 7(e) and 18). These statutes were later recodified, without substantive change, within Subtitle 3 of Title 12 of the Courts Article. *See Pack Shack, Inc. v. Howard County*, 371 Md. at 251 n.7.

The current "statutory scheme is structured to confer a broad, general right of appeal, that subsequently is limited by enumerated 'exceptions.'" *Pack Shack, Inc. v. Howard County*, 371 Md. at 249. The "general right of appeal" (*id.* at 250) is found in CJP § 12-301. It states: "*Except as provided in § 12-302 of this subtitle*, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court." CJP § 12-301 (emphasis added). As one such exception, this general right to appeal from a final judgment "does not apply to appeals in contempt cases, which are governed by § 12-304 of this subtitle[.]" CJP § 12-302(b). In turn, CJP § 12-304(a) provides: "Any person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudging him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action."[9]

This statute establishes two "prerequisites" that must "be satisfied before an appeal may be successfully maintained in a contempt case." *Becker v. Becker*, 29 Md.

[9] CJP § 12-402 supplies an identical right to appeal from a contempt order issued by a district court.

App. 339, 344 (1975). For an order in a contempt case to be appealable, CJP § 12-304 requires the order "to be passed to preserve the power and dignity of the court" and "to have adjudged the person appealing in contempt of court." *Pack Shack, Inc. v. Howard County*, 371 Md. at 254. This statute "clearly and unambiguously limits the right to appeal in contempt cases to persons adjudged in contempt." *Id.* In other words, an appellant "has no standing to appeal" if the appellant "is not the party who has been adjudged in contempt[.]" *Becker v. Becker*, 29 Md. App. at 346.

In the present case, the Molinas have appealed from the order denying their motion to accept the contempt petitions for filing. The court's denial of their motion has the characteristics of a final judgment in a contempt case. *See McCormick v. St. Francis de Sales Church*, 219 Md. 422, 426-27 (1959) (holding that an order that has the effect of striking an initial pleading meets the test for finality). Even though the order did not deny the contempt petitions on the merits, the order had the effect of putting the Molinas out of court because it terminated any contempt proceedings and denied them the means of further prosecuting their interests in the subject matter of those proceedings. *See generally Monarch Acad. Baltimore Campus, Inc. v. Baltimore City Bd. of Sch. Comm'rs*, 457 Md. 1, 43-44 (2017) (explaining the characteristics of a final judgment). Accordingly, if the legislature had granted a right to appeal from a "final judgment" in a contempt case, then it appears that the Molinas would be entitled to seek appellate review of the order that terminated their case.

But the legislature has not extended this Court's jurisdiction to the "final

judgment" in a contempt case. In contempt cases, the right to appeal is limited to orders that (1) are passed to preserve the power or vindicate the dignity of the court and (2) adjudge the appellant to be in contempt. *See* CJP § 12-304(a). If the court had allowed the contempt case to proceed, and if the court eventually issued an order finding CSAA or AAA to be in contempt, then that order would become appealable. Yet, even then, the Molinas could not appeal from that order, because the right of appeal would be limited to CSAA or AAA as the person adjudged to be in contempt. "'The right of appeal in contempt cases is not available to the party who unsuccessfully sought to have another's conduct adjudged to be contemptuous.'" *Pack Shack, Inc. v. Howard County*, 371 Md. at 258 (quoting *Becker v. Becker*, 29 Md. App. at 345 (citing *Tyler v. Baltimore County*, 256 Md. at 71)).

The Molinas' appeal differs from others in which the appellate courts have applied CJP § 12-304. The circuit court did not deny the Molinas' petitions on the merits, because it effectively prevented any adjudication of the merits when it declined to accept the petitions for filing. Yet this feature of the order, while unusual, is immaterial to whether the order met the statutory criteria. The order denying the Molinas' motion was not an order "passed to preserve the power or vindicate the dignity of the court," nor was it an order "adjudging [them] in contempt of court [.]" CJP § 12-304(a). The Molinas have no right to appeal as "the party who unsuccessfully sought to have the other adjudged in contempt." *Kemp v. Kemp*, 42 Md. App. 90, 101 (1979), *rev'd on other grounds*, 287 Md. 165 (1980).

Even though we have determined that we have no jurisdiction to review the ruling terminating the contempt cases, this determination does not require us to dismiss the appeal altogether. *See State Comm'n on Human Relations v. Baltimore City Dep't of Recreation & Parks*, 166 Md. App. 33, 39-40 (2005) (declining to review circuit court's denial of petition for contempt and limiting scope of review to additional rulings made by the court at the show-cause hearing, which affected the underlying judgment).

The Molinas made their motion within 30 days after the court had dismissed their negligence action against the Toombses. Primarily, they asked the court to accept the initial pleadings for a contempt case against CSAA and AAA. As an alternative form of relief, they asked the court to vacate the order of dismissal and reopen the action against the Toombses, to allow the Molinas additional time to file new contempt petitions against CSAA and AAA. This alternative request could be construed as a timely motion to revise the judgment in the negligence action. *See* Md. Rule 2-535(a) (providing that "[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment"). Even though the Molinas did not cite Rule 2-535, their motion may be treated as a motion to revise to the extent that they were asking the court to vacate the underlying judgment. *See Gluckstern v. Sutton*, 319 Md. 634, 650-51 (1990); *Pickett v. Noba, Inc.*, 122 Md. App. 566, 571 (1998).

Treating the ruling as the denial of a revisory motion, however, does little to advance the Molinas' ultimate cause. "'An appeal from the denial of a motion asking the court to exercise its revisory power is not necessarily the same as an appeal from the

judgment itself.'" *Bennett v. State Dep't of Assessments & Taxation*, 171 Md. App. 197, 203 (2006) (quoting *Green v. Brooks*, 125 Md. App. 349, 362 (1999)). A motion to revise a judgment under Rule 2-535(a) is "entrusted to the wide discretion of the trial judge." *Stuples v. Baltimore City Police Dep't*, 119 Md. App. 221, 239 (1998). The applicable standard of review is "'whether the trial court abused its discretion in declining to revise its judgment.'" *Bennett v. State Dep't of Assessments & Taxation*, 171 Md. App. at 203 (quoting *Green v. Brooks*, 125 Md. App. at 362).

"An abuse of discretion constitutes 'an untenable judicial act that defies reason and works an injustice.'" *Li v. Lee*, 210 Md. App. 73, 98 (2013) (quoting *Das v. Das*, 133 Md. App. 1, 15 (2000)). The abuse-of-discretion standard is highly deferential in most contexts, but even more so in the context of a revisory motion. *See Estate of Vess*, 234 Md. App. 173, 205 (2017) (citing *Stuples v. Baltimore City Police Dep't*, 119 Md. App. at 232). It is not necessarily an abuse of discretion to decline to revise a judgment to correct an error, and the "nature of the error, the diligence of the parties, and all surrounding facts and circumstances are relevant" to the court's decision on whether to exercise its revisory powers. *Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 700 (1999). This Court will not reverse the denial of a motion to revise "unless there is a grave reason for doing so." *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 724 (2002).

By no means here did the circuit court abuse its discretion by declining to revise the judgment in the negligence action. In their motion, the Molinas merely suggested vacating the judgment as one "practical solution" that would allow them to pursue

contempt claims against the non-party insurance companies. They insisted that "Maryland jurisprudence favors an adjudication on the merits" and that "[v]acating the order [would] not adversely affect" the Toombses. Yet the motion failed to identify any legal grounds for vacating the judgment in the negligence action or to identify authorities in support of those grounds.[10]

The purpose of the Molinas' request to vacate the judgment was to advance their interest in a discovery expedition that had no direct connection to the merits of the judgment in the negligence action against the Toombses. The Molinas admitted as much when they told the court that, if it vacated the dismissal, the Toombses would need to "be dismissed again and/or the dismissal Order reinstated[.]" We are aware of no authority, and the Molinas have identified none, holding that a court should or must vacate a judgment favorable to a defendant so that the plaintiff can use that reopened case as a vehicle for obtaining information from a third party. To the contrary, the "court retains revisory control and power over a judgment for thirty days to ensure that no meritorious defenses or other equitable circumstances justify reversal, not to extend the period of

[10] The Molinas also suggested, inaccurately, that the Toombses "agreed" to adjudicate the contempt petitions. As evidence of such an agreement, they pointed to an email in which counsel for the Toombses mentioned that, during the June 29 hearing, the court and the parties had "discussed" a follow-up hearing to address the motion to quash notice of depositions and the petitions for contempt. Nothing in the email or in the hearing transcript can be construed as an agreement to hold the judgment open to permit additional filings by the Molinas. At the June 29 hearing, counsel for the Toombses made it clear that his "primary concern" was to obtain "the dismissal with prejudice as to [his] clients, so that that case [would be] resolved." Opposing the request to vacate the judgment was entirely consistent with the position advanced at the hearing.

discovery." *Hossainkhail v. Gebrehiwot*, 143 Md. App. at 728 (footnote omitted). The court acted well within the bounds of its discretion when it decided not to disturb the judgment dismissing the claims against the Toombses.

In sum, there is no basis for this Court to reverse the circuit court's rulings. The Molinas have no right to appeal from the order to the extent that it precluded them from seeking to hold others in contempt. Although the denial of their motion to vacate the underlying judgment is reviewable, the court was not required under the circumstances to revise the (undisputedly correct) judgment dismissing the claims against the Toombses.[11]

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS, INCLUDING THE COSTS OF PRINTING THE APPENDIX TO THE APPELLES' BRIEFS, TO BE PAID BY APPELLANT.

[11] If we did have jurisdiction to review the denial of the motion to accept the filing of the contempt petitions *nunc pro tunc*, we would have difficulty imagining how the circuit court could have erred or abused its discretion in denying that motion. The Molinas asked the court to accept the contempt petitions for filing as of June 28, 2017, but their motion failed to establish the crucial fact that the clerk had actually received the petitions on that date. The clerk's notice returning the petitions did not indicate when the documents had been received. Even though the clerk had returned the petitions to the Molinas, the Molinas did not append a copy of the petitions to their motion to accept filing of the petitions. Instead, the motion rested on unsworn factual assertions that some unidentified person filed the petitions on the night of June 28 with a proper certificate of service. The motion failed to comply with Rule 2-311(d), which requires that a motion "based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based." Moreover, as a practical matter, the court could no longer require the clerk to "file" the petitions because the petitions were no longer in the court's possession.