Circuit Court for Worcester County
Case No.: C-23-CV-20-000125

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1608

September Term, 2023

DEBORAH BENTON

v.

HARTLEY HALL NURSING &
REHABILITATION CTR. INC., ET AL.

Wells, C.J.,
Tang,
Woodward, Patrick L.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Wells, C.J.

Filed: November 26, 2024

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

The Circuit Court for Worcester County dismissed appellant Deborah Benton's complaint for wrongful termination against her former employer, appellee Hartley Hall Nursing and Rehabilitation Center ("Hartley Hall"). The dismissal was a sanction for Benton's multiple discovery violations. Benton appealed. For the reasons that follow, we affirm.

PROCEDURAL HISTORY

The procedural history of this case and the dates on which certain events occurred are important. We give a condensed recitation of what occurred below.

Benton filed and electronically served her complaint on Hartley Hall on April 21, 2020. Benton later filed an amended complaint on October 23, 2020. Hartley Hall served Benton with a set of discovery requests, namely, a set of interrogatories and a request for a production of documents on February 23, 2023. Under Maryland Rules 2-421(b) and 2-422(c) discovery responses for answers to interrogatories and requests for production of documents were due within thirty days, which was March 27, 2023.[1] Benton did not respond to either request for discovery.

As a result, on April 3, 2023, Hartley Hall's attorney, Maxim V. Doroshenko, emailed Benton's attorney, Ryan T. West, asking when he would respond. On April 10, according to testimony in an affidavit Doroshenko later filed in this case, West told Doroshenko he would respond to the discovery requests that week. After he received no

[1] Thirty days from February 23, 2023 was Saturday March 25, 2023, so the discovery was due the next business day, Monday, March 27, 2023.

responses or contact with West after April 10, Doroshenko contacted West for an explanation. According to Doroshenko, the two agreed West would supply discovery responses by April 28, 2023.

Hartley Hall's First Motion to Compel

By April 30, West still had not sent any discovery responses. The same pattern repeated itself over the next month with Doroshenko contacting West, at least twice during May, asking for an update. Each time, West responded that he would comply by a certain date. West never complied with the discovery requests at all. On May 30, 2023, Hartley Hall filed a motion to compel Benton to provide discovery responses. On the last day to reply to the motion to compel, Benton filed interrogatory answers that Hartley Hall said were either incomplete or unresponsive. Further, according to Hartley Hall, Benton produced no documents pursuant to its request.

At a status conference held on June 21, 2023, Doroshenko told the circuit court about the alleged discovery deficiencies. Additionally, he told the court the discovery issues were not moot, as West claimed. The court deferred ruling on Hartley Hall's motion to compel for 60 days, presumably to allow Benton to provide full interrogatory answers and documents, or object to the same.

Immediately after the status conference, Doroshenko sent West a letter outlining the discovery deficits. Specifically, the letter outlined deficiencies with interrogatory responses 6, 7, 9, 11, and 14, as well as production of documents requests that were grouped as follows: requests 1, 9, and 17 (wage and salary information); requests 8 and 21

(documents related to Benton's "feeling or impressions" about her alleged wrongful discharge, including texts and social media posts); request 10 (somatic and mental health records, including evaluations and treatment, particularly from a healthcare provider that Benton visited "at least 269 times"), which included attached medical release forms; and finally, requests 13 and 22 (requesting documents Benton may have received from "any governmental entity", such as, "the Equal Employment Opportunity Commission, the Maryland Department of Labor, Licensing, and Regulation, Division of Unemployment Insurance, the Maryland Workers' Compensation Commission, or a similar state or local agency"). Additionally, Hartley Hall asked Benton to review and supplement her objections because they were not specific enough for Hartley Hall to determine whether or not the objections applied.

In an affidavit, Doroshenko testified that he heard nothing from West in response to the deficiency letter and emailed West asking for an explanation on July 14, 2023. According to Doroshenko, West told him he "must have missed the email," and that he would review it and respond.

Hartley Hall's Second Motion to Compel

West did not respond, however. As a result, Hartley Hall filed a second motion to compel on August 2, 2023. The court immediately set a hearing on that motion for August 18, 2023. After hearing from both sides, the court instructed the attorneys to confer within 30 minutes after the conclusion of the hearing to determine if the responses could be

delivered within one week. If the deficiencies remained at the end of the week-long period, then the parties were to inform the court.

The attorneys met as the court instructed. Afterwards, on August 21, 2023, by regular mail and email, Doroshenko sent West a letter capturing what they supposedly agreed upon with a request that West acknowledge receipt of the message.[2] According to Doroshenko, West failed to inform him he received the letter and did not provide the discovery as agreed. As a result, on August 23, 2023, Doroshenko sent the court a notice that, after meeting as the court requested and agreeing upon what items West would provide to complete discovery, the same deficiencies were still outstanding. In closing, Doroshenko requested the court give West two additional weeks to provide the agreed upon discovery.

On August 23, 2023, according to Doroshenko, West replied to him with a blank medical release form Benton had signed. According to Doroshenko, the blank form did not identify any medical providers to whom the release should be directed. The next day, Doroshenko sought clarification about who, Doroshenko or West, should fill out the form, and to whom it should be sent. West did not respond to that email request or to another similar request Doroshenko sent five days later.

Soon after this, Doroshenko took a leave of absence from the law firm of Fisher and Phillips, LLP. Lauren Goetzl of the same firm, assumed the role of Hartley Hall's counsel.

[2] The full letter is set forth on pages 170-171 of the appendix to Hartley Hall's brief.

On September 8, 2023, Goetzl sent the court a follow-up notice, which essentially restated what Doroshenko told the court in the August 2023 notice about West not complying with the parties' supposed agreement to provide full discovery responses and documents.[3] A day later, September 9, 2023, West responded, stating Hartley Hall could

[3] The notice detailed the following deficiencies:

a. To (1) identify (by including name, address, telephone number, and/or any other known contact information) each health care provider who has examined or treated Plaintiff for any reason between January 1, 2016 through the present, (2) state the purpose of each examination/treatment, and (3) state when examination and/or treatment occurred;

b. Identify (by including name, address, telephone number, and/or any other known contact information) each health care provider who has examined or treated Plaintiff for any emotional distress or other mental distress as a result of the allegations in the Complaint;

c. Provide all available documents concerning her employment wages since January 1, 2016, including her tax returns, W2s from each identified place of employment, and pay stubs from each place of employment;

d. Identify each and every instance in which she filed for bankruptcy, including date and court where petition was filed;

e. Identify each and every instance in which she was a party or a witness in a lawsuit initiated or active since June 1, 2017 through the present, other than the instant action, including court, case name, role, and date any testimony was provided;

f. Provide any documents that recorded or reflected Plaintiff's feelings or impressions relating to her allegations of wrongful discharge, such as emails, social media posts, direct messages, instant messages, text messages, or other similar media concerning the subject or any related matter, or shall provide an affirmative statement that she is not in the possession, custody, or control of any such documents, if applicable; or

(continued)

prepare the blank medical release forms and address them to whichever healthcare providers it wished. Aside from this, West did not address any of the issues Doroshenko and Goetzl raised in their notices to the court. Finally, on September 18, 2023, Goetzl told the court Benton still had not provided full interrogatory answers or supplied documents as requested. Further, Goetzl asserted that West's failure to supply complete discovery responses made defending the case unnecessarily difficult and, ultimately, prejudicial to Hartley Hall.

Order Dismissing the Amended Complaint

Two days later, September 20, 2023, the court issued an order dismissing Benton's complaint against Hartley Hall. In the order, the court recounted that Benton filed her second amended complaint in December 2020. After reciting other procedural matters, the court noted that Hartley Hall filed its discovery requests in February 2023.Since that time, "[Benton] has repeatedly failed with discovery obligations by serving deficient, untimely discovery responses on numerous occasions." Further, the court stated, "[Benton] has not supplemented discovery or taken any other form of corrective action." Noting that Maryland Rule 2-433(a)(3) and the holding in *Valentine-Bowers v. Retina Group of Washington, P.C.*, 217 Md. App. 366, 378, (2014) give a court "broad discretion" to

> g. Provide any documents in her possession that she received or sent by her or on her behalf from any governmental entity (including the Maryland Department of Labor, Licensing, and Regulation, the Division of Unemployment Insurance, the EEOC, and/or the Maryland Workers' Compensation Commission) concerning her employment with Defendant and/or the claims in this action.

sanction a party who fails to adequately provide discovery responses, the court imposed the "ultimate sanction" by dismissing Benton's complaint against Hartley Hall.

Benton Moves to Vacate the Judgment

Benton moved to "vacate the judgment" the next day. In that pleading, Benton set forth her version of what transpired over the preceding eight months. In short, she claimed she complied with all outstanding discovery requests. Consequently, she pled that the court's order was signed in error and had to be vacated. In its reply, Hartley Hall recounted in detail the history of the case and its attempts to obtain full discovery, to no avail, for the better part of the year. Also in the reply, Goetzl pointed out that West claimed Doroshenko did not forward discovery responses to her. Goetzl called that statement false and noted that West's affidavit to the court did not support that assertion. Further, according to Goetzl, "Mr. West did not forward critical discovery information until ***after*** the Court entered judgment and Plaintiff has still not produced a single document." (emphasis in original). The court set a hearing on Benton's motion to vacate for October 23, 2023.

Hearing on the Motion to Vacate

At the outset of the hearing, the court briefly recounted the history of the case, specifically focusing on Hartley Hall's two motions to compel discovery, the hearings that arose as a result of those motions, and the court's expectation that counsel would be able to work toward a resolution. Despite this, after several months, Hartley Hall claimed Benton's interrogatory responses were still deficient, and no documents had been provided. After receiving Hartley Hall's two notices about the deficiencies, the court stated it entered

a September 20, 2023, order dismissing Hartley Hall, the last remaining defendant. After which, the court noted, West moved to vacate the judgment.

West asserted he complied with the discovery requests which led the court to set the matter for a hearing. More importantly, in the court's opinion, it was clear from the two competing versions of what transpired "that somebody [was] not being truthful with the [c]ourt." To impress upon them the gravity of the claims they made in their pleadings, the court put both West and Goetzl under oath.[4]

In summary, West admitted he had indeed reached an agreement with Doroshenko to provide discovery after the August 18, 2023, hearing. Further, West said that in August 2023, he and Doroshenko "confirmed" "that discovery would be provided on a rolling basis," after West provided the blank medical waiver. Significantly, West testified that "[e]verything at that point had been given to [] Doroshenko, everything. There was nothing left, there was no discovery issue." When the court asked why, if everything had been turned over, West sent additional discovery one day after the order of dismissal. West explained he had been confused about why Doroshenko's emails kept being "kicked back" to him. He also explained he was going to provide wage forms ("W2s") sometime later, on a "rolling basis," even though Doroshenko already had "all" of the other financial information. At several junctures during the hearing West testified that he provided full discovery after the August 18 hearing. "[W]e gave [Doroshenko] everything he wanted,

[4] While it is not clear from the transcript of the hearing, it does not appear that the attorneys testified from the witness stand, but rather, from counsels' tables.

everything. There's nothing left. There's nothing left to give." Later in the hearing, West claimed the motions to compel were nothing but trial tactics. But West also admitted there were outstanding discovery issues before the second motion to compel was filed.

Goetzl reminded the court that West had not produced any documents, despite his claim that he complied with discovery. Further, she and West had never spoken even though he testified they spoke at some point after Doroshenko took a leave of absence from the law firm. Goetzl also pointed out several inaccuracies in West's testimony. Specifically, she noted Doroshenko's letter to West after the hearing on the second motion to compel was a detailed list of the discovery deficiencies. One item on the list was that West was supposed to provide completed releases for each of Benton's healthcare providers, rather than sending blank release forms. Goetzl obtained access to Doroshenko's email files. Additionally, she testified that nothing in the correspondence between Doroshenko and West spoke of West providing interrogatory answers or producing documents on "a rolling basis."

In ruling on the motion, the court credited Goetzl's testimony but discounted West's testimony. The court found that after the hearing on the motion to compel, the court expected the attorneys would be able to resolve the dispute. The court concluded that West had several opportunities to reasonably comply with the discovery request but did not. As a result, the court denied the motion to vacate.

Benton timely appealed the dismissal of the complaint. Additional facts will be discussed as needed.

MOTION TO DISMISS

Hartley Hall moved to dismiss this appeal, primarily because Benton did not adhere to the rules governing the content and form of briefs to be submitted to this Court.[5] Specifically, Hartley Hall argues that Benton's opening brief did not comply with Rule 8-501(d) in that she did not file a record extract or include a proper table of contents, among other deficiencies. Hartley Hall also argues that Benton's appellate counsel did not consult with its appellate counsel beforehand to develop a joint record extract as the Rule requires.

We granted Hartley Hall's motion to dismiss because of the non-conformity but gave Benton the opportunity to file a conforming brief. Benton later electronically filed a conforming brief and record extract.[6] Hartley Hall states that Benton's counsel only contacted their counsel after electronically filing its amended brief and record extract. Hartley Hall also alleges that Benton's counsel did not consult with Hartley Hall beforehand because he assumed Hartley Hall would not agree to the contents of a joint record extract. Finally, Hartley Hall argues it has expended time and expense to point out the deficiencies with Benton's brief.

[5] If Benton replied to Hartley Hall's motion to dismiss, as set forth in its brief, we have not seen it.

[6] On October 1, 2024, the Clerk's Office sent a notice to Benton reminding her that under Rules 20-403(b) and 20-404(b), she was to file 8 paper copies of her amended brief and record extract, which was filed electronically on April 30, 2024. We cautioned that "[i][f the paper copies of your amended brief and record extract are not received within 15 days of this notice, the Court may strike your amended brief and record extract." To date, and without explanation, Benton has not complied with these Rules. Nonetheless, we will not exercise our discretion and strike Benton's amended brief.

After our review of the record, we do not disagree with much of what Hartley Hall argues. Nonetheless, we decline to exercise our discretion under Rule 8-602 and dismiss Benton's appeal. Therefore, we turn now to the merits.

DISCUSSION

Maryland Rule 2-433(a)(3) gives trial courts broad discretion to impose sanctions for discovery violations. The available sanctions range from striking out pleadings to dismissal. The decision whether to invoke the "ultimate sanction" of dismissal is left to the discretion of the trial court. *See Mason v. Wolfing*, 265 Md. 234, 235 (1972) ("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."). Further, we noted that there need not be "wilful or contumacious behavior" by a party to justify imposing sanctions. *Warehime v. Dell*, 124 Md. App. 31, 44 (1998) (quoting *Beck v. Beck*, 112 Md. App. 197, 210 (1996)).

"Our review of the trial court's resolution of a discovery dispute is quite narrow; appellate courts are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery." *Sindler v. Litman*, 166 Md. App. 90, 123 (2005). Differently put, in order to reverse a trial court's decision, it must be "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable.'" *Wilson v. John Crane, Inc.*, 385 Md. 185, 198–99 (2005) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 313 (1997) (internal citations omitted)).

We articulated five factors a court should consider before imposing sanctions, including dismissal. They are:

> (1) whether the disclosure violation was technical or substantial; (2) the timing of the ultimate disclosure; (3) the reason, if any, for the violation; (4) the degree of prejudice to the parties respectively offering and opposing the evidence; and (5) whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance. The factors often overlap and do not lend themselves to a compartmental analysis.

Valentine-Bowers v. Retina Group of Washington, P.C., 217 Md. App. 366, 378–79 (2014) (quoting *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 725–26 (2002)).

In her brief, Benton argues the court did not analyze the *Hossainkhail* factors before dismissing the case. She claims the court "disregarded" the two extensions Hartley Hall requested for her to comply with its motions to compel and her "complete compliance with the [c]ourt order [of] August 18, 2023." In support of her argument, Benton discusses each of the five factors and provides what she considers a basis for why none of the factors are applicable.

Hartley Hall argues the opposite. Taking each of the *Hossainkhail* factors, it discusses how Benton failed to meet her discovery obligation, thereby supporting the court's decision to dismiss the complaint.

As this Court and the Supreme Court of Maryland have often said, judges are presumed to know the law and properly apply it, unless the record shows otherwise. *Ball v. State*, 347 Md. 156, 206 (1997), *cert. denied*, 522 U.S. 1082 (1998); *State v. Chaney*, 375 Md. 168, 179 (2003) (observing it is a well-established principle that "'[t]rial judges

are presumed to know the law and to apply it properly.'"); *see also Medical Mut. Liability Ins. Soc. of Md. v. Evans*, 330 Md. 1, 34 (1993).

Additionally, we have recognized that where a standard or test is to be applied, a trial judge need not announce each step of his or her analysis in reaching a conclusion. "Because trial judges are presumed to know the law, not every step in their thought process needs to be explicitly spelled out." *Zorich v. Zorich*, 63 Md. App. 710, 717 (1985) (citations omitted). Indeed, in *Cobrand v. Adventist Healthcare, Inc.*, we held that when a matter is reserved to the sound discretion of the trial court, "a trial judge's failure to state each and every consideration or factor in a particular applicable standard does not, absent more, constitute an abuse of discretion, ***so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion***." 149 Md. App. 431, 445 (2003) (emphasis added).

In this case, the record is sufficiently developed for us to conclude the circuit court considered the *Hossainkhail* factors before dismissing Benton's complaint. *First*, we note the same judge handled each of the proceedings below, reviewing and ruling on the first and second motions to compel and, ultimately, issuing the order granting the motion to compel and dismissing the complaint. We conclude the same judge had the entire circuit court record before him. He understood the history of the case and what transpired over the course of several months. Consequently, we give greater deference to a trial judge who had first-hand knowledge of the parties, the attorneys, and the issues developed over the life a case, as opposed to when different judges review a case file and rule on motions separately.

Second, the court's order here indicates the presiding judge was aware of the procedural history of the case, the issues generated, and the parameters of the court's discretion as it relates to sanctions for discovery violations. For example, the court notes the procedural history of the case in the order, specifically when Benton's original complaint, the amended complaint, Hartley Hall's answer, and its request for discovery were filed. The order shows the court knew Hartley Hall moved to compel Benton to answer discovery, stating: "Having read and considered Defendant Hartley Hall Nursing & Rehabilitation Center, Inc.'s Motion to Compel, filed August 2, 2023, and Plaintiff's Response thereto . . . ."

Additionally, the court resolved the conflict between Hartley Hall's position in its motion to compel and Benton's position in her response. The court concluded that "[Benton] has repeatedly failed [to comply with her] discovery obligations by serving deficient, untimely discovery responses on numerous occasions." "[Benton] has not supplemented discovery or taken any other form of corrective action[.]"

Perhaps most importantly, the order cites to Rule 2-433(a)(3), which the circuit court noted "gives courts broad discretion to impose sanctions [for discovery violations], which range from striking pleadings to dismissal, and the decision whether to invoke the 'ultimate sanction.'" From this we conclude the court knew it had wide discretion to address discovery violations. And, significantly, the court cites to *Valentine-Bowers*, previously cited, a recent case reiterating the *Hossainkhail* factors, and gives the correct page number in *Valentine-Bowers* where the factors can be found. We conclude the court

was aware of the *Hossainkhail* factors and applied them. While the better practice would be to announce each factor, we conclude the record is sufficiently developed for us to conclude the court exercised its discretion after considering the relevant factors.

Finally, we also have the transcript of the hearing on the motion to vacate, which gives us a window on the court's thinking about why it granted the motion to compel. The court spoke directly to Benton after the hearing, who was in the courtroom, and said:

> Ms. Benton, I hope you understand that the [c]ourt's ruling is not personal in nature, it's not a commentary of the validity of your case. It is a reaction to Mr. West's failings when it comes to the discovery process, despite the [c]ourt's many chances to comply with discovery. I had a hearing on a motion to compel where I gave Mr. West an opportunity to meet with Mr. Doroshenko to resolve these outstanding issues.
>
> * * *
>
> The Court does not find any basis to revise its decision to dismiss the charges as a result of the failing to comply with discovery. There were very specific instructions to the attorneys regarding resolution. Had they been complied with, the attorneys, meaning Mr. Doroshenko and Mr. West, at the conclusion of that motion to compel, I reserved on ruling on that motion so that reasonable professionals could make things happen. And that clearly was not the case.
>
> If nothing else, as evidenced by the fact that one day after my order of September 20, 2023, Mr. West sent an e-mail to Mr. Doroshenko, not to Ms. Goetzl but to Mr. Doroshenko, who he just indicated he knew was on some sort of medical leave but sent an e-mail to Mr. Doroshenko in an effort to comply with outstanding discovery. If discovery had been complied with, Mr. West, there would be no need to send an e-mail on Thursday, September 21, 2023, at 2:12:49 p.m.

In ruling on the motion to vacate, the court articulated that Benton had not complied with Hartley Hall's reasonable discovery requests despite being given several opportunities

to do so. Reviewing the *Hossainkhail* factors and the record, we may reasonably conclude that: (1) the disclosure violation was substantial; (2) discovery had not been fully provided over the many months the case was active; (3) West had not provided a plausible reason for not providing full discovery; (4) the degree of prejudice to Hartley Hall because of Benton's non-compliance was substantial; and (5) by the time the court considered the second motion to compel, neither party asked for a postponement, nor did the court seem to think it was warranted under the circumstances. On this record, we conclude the court did not abuse its discretion in granting Hartley Hall's motion to compel and dismissing the amended complaint.

MOTION TO DISMISS DENIED. JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. APPELLANT TO PAY THE COSTS.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1608s23cn.pdf