Circuit Court for Wicomico County
Case No. 22-C-15-001128

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1612

September Term, 2016

THE ROOP GROUP PROPERTY,
MANAGEMENT, P.A.

v.

TAMMY VANGENDEREN

Meredith,
Arthur,
Reed

JJ.

Opinion by Reed, J.

Filed: January 8, 2020

*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 conclusion of a two-day trial, a jury in the Circuit Court for Wicomico County found the Roop Group Property Management, P.A. ("Appellant") liable for breach of contract and negligence. This verdict followed an Order, entered as a discovery sanction by the circuit court judge, which precluded Appellant from calling fact witnesses on his behalf at trial. It is from that Order, rulings made in relation to that Order, and a spoliation instruction read by the trial court that Appellant brings this timely appeal. In doing so, it presents three questions for our review, which we have rephrased and expanded for clarity[1]:

I. Did the trial court abuse their discretion when they issued discovery sanctions that precluded Appellant from calling witnesses or offering any evidence or exhibits (other than the parties' property management contract) at trial?

II. Did the trial court err when they permitted Appellee to continuously reference the parties' discovery dispute at trial?

III. Did the trial court abuse their discretion when they issued sanctions that required Appellant to pay additional attorney's fees?

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[1] Appellant presents the following questions:

A. Whether the trial court erred by granting and enforcing an order which precluded the Roop Group from calling witnesses or offering any evidence or exhibits (other than the parties' property management contract) at trial?

B. Whether the trial court erred by permitting Ms. Vangenderen to continuously reference the parties' discovery dispute at trial, including unsupported claims that documents were "destroyed," despite the severe sanctions that were already enforced against the Roop Group?

C. Whether the specific sanctions imposed were erroneous, considering Ms. Vangenderen did not comply with Maryland Rule 2-431?

IV. Did the trial court abuse their discretion in issuing sanctions, given that Appellee did not comply with Maryland Rule 2-431?

Tammy Vangenderen ("Appellee") also brings three questions for our review, which are resuscitations of Appellant's. Therefore, we will address those questions in conjunction with Appellant's.[2] For the reasons that follow, we answer all of Appellant's questions in the negative. Accordingly, we affirm the decision of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

In August of 2011, Appellee and Appellant entered into a Property Management Contract ("Contract") for the rental property ("the Property") owned by Appellee. The contract provided that Appellant was to manage Appellee's rental property located in Fruitland, Maryland. Pursuant to the contract, Appellant was required to make any necessary repairs, retain, clean, and protect the property. At the time of signing, the house was rented to Mr. and Mrs. Brian Campbell ("the Campbells"). Their lease agreement was to be renewed every year provided that neither party terminated. The Campbells vacated the property on July 31, 2014.

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[2] Appellee presents the following questions:

I. Did the trial court abuse its discretion in signing and entering the order of May 13, 2016?

II. If the trial court abused its discretion in signing and entering the order of May 13, 2016, does that abuse of discretion warrant reversal?

III. Did the trial court err in permitting references to Appellant's failure to produce documents in discovery?

Following the Campbells departure, Appellee notified Appellant's agent, Micki Bailey ("Ms. Bailey") on August 12, 2014 that she would like to take the house off the market while renovations were being completed, and thus, did not need management. Appellee also stated she would notify Ms. Bailey when the property was ready to be placed back on the market for renters. Appellee notified Ms. Bailey that the renovations to the house had been completed and thereafter, Ms. Bailey visited the property to get pictures and began marketing the property for rent. Ms. Bailey did not believe there was a contractual relationship at that point, believing it resumed only after there was a tenant residing in the property. However, at no time did Appellee advise Appellant or Ms. Bailey that she was terminating the property management agreement.

Ms. Bailey was in the process of showing the property to potential renters when she observed a large quantity of water on the floor. It was later determined that there was a crack in the water lines that were located in close proximity to the hot water heater. It was suggested that due to the cold temperatures, the pipes burst, causing water to flood and damaging the house's interior. Appellee hired contractors to clear the damaged portions of the house. The work to repair the house took several months and cost Appellee around $51,734.25.

Following the repairs, Appellee sued Appellant for the costs of the repair and restoration to the property. She claimed Appellant breached their contract by failing to *inter alia,* manage, protect, provide repairs, inspect, and provide reasonable assistance to Appellee in protecting and maintaining the property. She further alleged Appellant was

negligent because it had a duty to inspect the house and failed to diligently manage the house according to the contract.

During discovery, Appellant's president, Adam Roop ("Mr. Roop") was deposed while unrepresented. During his deposition on January 11, 2016, Mr. Roop brought "many" documents that were not otherwise previously turned over in discovery. Appellee's counsel looked over the documents briefly, and Mr. Roop acknowledged that he relied on the documents in preparation for the deposition. When Mr. Roop was informed that Appellee's attorney would ask him questions about the documents, he responded,

> "No, I'm not going to answer any questions other than what the documents you have ben provided (sic). Actually, can I have this back? I will just go ahead and take this back. We're just talking with the documents we've submitted to you."

At this time, Mr. Roop left the deposition room for approximately ten minutes. When he came back, Mr. Roop only had the documents he had previously provided to Appellee, which were "far less" than what he had just briefly shown Appellee's attorney.

Following Mr. Roop's deposition, an Order was entered on April 16, 2016, where discovery violations were levied against Appellant. Appellant was ordered to provide full and complete answers to interrogatories, to provide copies of documents previously requested by Appellee, and to pay attorney's fees of $850.00. When Appellant did not comply with the April 16, 2016 Order, Appellee filed a Motion *in Limine*, as Appellee believed that Appellant was deliberately withholding corporate documents which he admitted to relying on in preparation for the deposition. Appellee requested that the court sanction Appellant, seeking to prohibit them from calling certain witnesses, and preclude

them from entering certain documents and photographs at trial. At the May 12, 2016 hearing, the motioning judge granted Appellee's motion and noted that "Mr. Roop committed a 'clear breach of the discovery rules…' and the breach was 'willful and deliberate.'"

The original trial was scheduled to take place on May 26, 2016 but was postponed by the court, and a new trial was set for August 23, 2016. The parties filed a Joint Motion to Extend Discovery Deadline, which was granted on July 5, 2016. However, the documents Appellant was mandated to provide by the court remained unproduced. Appellee ultimately filed a petition ("the Petition") to hold Appellant in constructive civil contempt, requesting sanctions for Appellant's continued non-production of documents. On August 23rd and 24th of 2016, the case was tried before a jury who found Appellant liable for breach of contract and negligence for $54,521.02. However, the presiding judge deferred the hearing on the Petition to November 1, 2016. On this date, the parties gave arguments regarding the merits of the Petition.

On November 9, 2016, an Order was entered by the trial court, which stated that the "failure of the [Appellant] to provide documents in contravention of Orders of this court dated April 16, 2016 and July 5, 2016…was willful and amounts to constructive civil contempt." In that order, the trial judge sanctioned Appellants and awarded $2,300.00 in attorney's fees to Appellee for Appellant's "refusal to provide discovery as required by the Maryland Rules" and due to their "…persistent disregard of the Orders of [the circuit] court."

STANDARD OF REVIEW

When reviewing a circuit court's order of sanctions for discovery violations, this Court is bound by the trial court's factual findings, unless they are found to be clearly erroneous. *See North River Ins. Co. v. Mayor & City Council of Baltimore*, 343 Md. 34, 56-57 (1996); *See also Rodriguez v. Clarke,* 400 Md. 39, 57 (2007) ("Trial judges are vested with great discretion in applying sanctions for discovery failures…thus we review the circuit court's determination of discovery sanctions under an abuse of discretion standard.") (citations omitted); *Klupt v. Krongard*, 126 Md. App. 179, 192 (1999). Our review of this issue is narrow and our function is not to substitute the judgment of the trial court, even if we would have reached a different result entirely. *See Nicholson Air Servs. v. Board of County Comm'rs of Allegany County*, 120 Md. App. 47, 67 (1998). "Instead, we must decide only whether there was sufficient evidence to support the trial court's findings. In making this decision, we must assume the truth of all the evidence, and of all the favorable inferences fairly deducible therefrom, tending to support the factual conclusions of the [trial] court." *Id.* (quoting *Mercedes-Benz v. Garten,* 94 Md. App. 547, 556 (1993)).

When considering the sanction itself, our review is even more restricted. This review is limited by the wide discretion of the trial court to manage the discovery phase of the cases before it. *See Klupt*, 126 Md. App at 193 (quoting *Warehime v. Dell,* 124 Md. App. 31, 43-44 (1998):

> Maryland law is well settled that a trial court has broad discretion to fashion a remedy based on a party's failure to abide by the rules of discovery. Indeed, in order to impose sanctions, a court need not find willful or contumacious behavior, rather in imposing sanctions, a trial court has considerable latitude.

(citations omitted). This Court is reluctant to second-guess the decisions of trial judges to impose sanctions for failures in discovery. As such, we may not reverse unless we find an abuse of discretion. *See Mason v. Wolfing*, 256 Md. 234, 236 (1972) ("Even when the ultimate penalty of dismissing the case or entering a default judgement is invoked, it cannot be disturbed on appeal without a clear showing that [the trial judge's] discretion was abused.").

This Court is ever mindful, however, that an abuse of discretion only arises when "no reasonable person would take the view adopted by the trial court or when the court acts without reference to any rules or principles; that is, the ruling is "violative of fact and logic." *See Smith v. State Farm Mut. Auto. Ins. Co.,* 169 Md. App. 286, 298 (2006), *North v. North*, 102 Md. App. 1, 13 (1994).

DISCUSSION

I. The May 13, 2016 Order

A. Parties' Contentions

Appellant argues that the sanctions imposed after the May 12, 2016 hearing were "drastically disproportionate to any actual perceived discovery failure." Moreover, it asserts that Appellee was neither prejudiced, nor knowledgeable about what documents actually existed that she did not receive. Further, it contends that the "collection of rulings that followed violate fact and logic, disabling any realistic defense the Roop Group could make to the jury." The litigation process and trial, from start to finish, was simply "unfair" and punitive.

Conversely, Appellee contends the circuit court did not abuse its discretion and notes that the trial court found on May 12, 2016 that the April 16, 2016 order had been "willfully ignored". Appellee notes that the court found there to have been a "clear breach of the discovery rules" and that the sanctions were appropriate, given the circumstances.

Analysis

It would be remiss of this Court not to acknowledge that Appellant cites no authority to endorse its argument regarding the motions hearing and the May 13, 2016 order, and this lack of statutory or case law support continues throughout its brief. Even so, we have repeatedly used the absence of said support as grounds to not address an Appellant's questions. *See von Lusch v. State*, 31 Md. App. 271, 282 (1976), *rev'd on other grounds,* 279 Md. 255, 368 (1977) (outlining that it is not the appellate Court's responsibility to find the law to support a party's appellate contentions); *See also Oroian v. Allstate Ins. Co.,* 62 Md. App. 654 (1984) (holding that because Appellant did not cite an authority for their position, their contention was deemed waived).

Nonetheless, in this instance, we will briefly address Appellant's first question. Maryland Rule 2-433(a)(2) provides, if the trial court "finds a failure of discovery, [it] may enter such orders in regard to the failure as are just, including…*an order refusing to allow the failing party to support or oppose designate claims or defense, or prohibiting that party from introducing designated matters in evidence…*" (emphasis added). As outlined above, this Court is limited to determining whether the trial judge abused his discretion, and because trial judges are granted great discretion, evidence preclusion can be a form of sanction. *See Rodriguez v. Clarke,* 400 Md. 39, 65 (2007) ("…trial judges are vested with

great discretion in applying sanctions for discovery failures. One form of sanction authorized by the Maryland Rules is evidence preclusion, which we have affirmed where there has been a confluence of discovery failures related to such evidence.") (citations omitted).

There is no indication in Appellant's brief or in the record which suggests that the circuit court's findings are devoid of fact and logic. On April 16, 2016, Appellants were ordered to answer interrogatories and provide copies of secreted documents previously withheld by Appellant. Appellant did not comply with this Order. As of May 12, 2016, the parties were within two weeks of trial, and Appellee had still not received the documents that Appellant was ordered to produce. Appellant argued at his deposition that the documents were for "him and his staff" but informed the circuit court judge that he was not going to produce them because they "had nothing to do with the case." Given these time constraints, Appellee would not have had the time to depose potential witnesses that Appellant may have presented at trial. In review of the evidence, the testimony and the demeanor of Appellant, the court found that "[Appellant] committed a 'clear breach of the discovery rules…'" and that there was "no justification whatsoever for these breaches". In accordance with Md. Rule 2-433 (a) (2), the circuit court operated well within its discretion by precluding Appellant from admitting certain evidence and precluding witnesses from testifying. Thus, we find no abuse of discretion.

II. Appellee's Statements During Trial

A. Parties' Contentions

Appellant contends that there were repeated references made by Appellee regarding Appellant's "alleged discovery dispute during the jury trial." Those instances included: (1) Appellee's opening statement where she made a reference to documents not being produced through discovery; (2) direct examination of Mr. Roop where Appellee questioned him regarding the discovery deficiencies, in which the trial judge remarked: "…we all know that your client was too cute in the deposition, too cute by two, and he wanted to play games, and [the sanctioning judge] picked up on it and has sanctioned for it… counsel will be able to argue spoliation. I am going to give a spoliation instruction"; (3) references to telephone logs that were not produced which were questioned during the cross-examination of Ms. Bailey; and (4) references to the discovery violation in closing argument that were "unartful, prejudicial and otherwise erroneous."

Appellee argues that Appellant admitted that the topic of the missing documents was fair game for cross-examination. Appellee notes that Appellant's attorney also referenced the missing documents in his closing argument, as he was permitted to do so. Additionally, Appellee suggests that the topic of the discovery dispute was discussed at length during the trial.

Analysis

As stated above, Appellant cites no applicable case law, statute, or legal authority to support its contention that it was prejudiced because Appellee was able to introduce

statements during her case-in-chief about the discovery violations committed by Appellant. Instead, Appellant only provides resuscitations of the trial transcript. We will not argue this case for Appellant. As this court has previously held, "[w]e cannot be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain his position." *von Lusch*, 31 Md. App. at 282 (quoting *Van Meter v. State,* 30 Md. App. 406, 408 (1976)). Accordingly, we will not address the potential merits of Appellant's contention discussing the Appellee's statements during trial.

III. November 9, 2016 Order

A. Parties' Contentions

Appellant argues that the November 9, 2016 Order filed following trial, where Appellant was sanctioned $2,300.00 in additional attorney's fees for alleged discovery failures, was an abuse of discretion. Appellee notes that the November 9, 2016 Order is not relevant to this appeal, as the trial judge's decision was based on Appellee's allegations in the Petition, which was filed two months after the trial had concluded.

Md. Rule 1-341 allows for the court to require a party who has maintained or defended a proceeding in bad faith, to pay to the adverse party the costs of the proceeding and the reasonable expenses, including attorney's fees. *See also Worsham v. Greenfield*, 435 Md. 349, 365-66 (2013) ("…the Rule is intended…to serve as a deterrent against frivolous litigation."). Appellant notes that there is no mention of what documents were not provided, and therefore, they should not have been sanctioned to pay additional

attorney fees. However, the April 16, 2016 Order specifically outlines the documents to be produced:

> 1. All documents which Adam Roop allegedly secreted which are referred to in his deposition testimony, pages 9-13;
> 2. All documents pertaining to any insurance policies and insurance agreements by and between [Appellant] and CAN Insurance Co. which are referred to by Adam Roop in his deposition testimony, pages 9-13;
> 3. All documents which passed between [Appellee] and [Appellant] from 08/31/11 to 1/13/15;
> 4. All documents which mention or pertain to any inspections performed by [Appellant] of [Appellee's] rental house from 8/31/11 to 1/13/15; and
> 5. All telephone logs mentioning and/or describing any telephone calls by and between [Appellee] and Bryant East.

By the time the November 9, 2016 Order was issued, Appellants had still not produced the documents they had been ordered to turn over, according to the April 16, 2016 and July 5, 2016 orders. Neither at the November 1, 2016 hearing, nor in their brief, did Appellant provide a "substantial justification" as to why they had not provided the documents pursuant to the April 16, 2016 order.

Therefore, because it is within the authority of the trial court to award such fees based upon sanctionable conduct, and Appellant's conduct fits within the scope of Md. Rule 1-341, we hold that the trial court did not abuse their discretion when they sanctioned Appellants to pay additional attorney fees, due to their "willful failure … to provide the required documents."

IV. Md. Rule 2-431

A. Parties' Contentions

Appellant argues that Appellee did not comply with the certification of good faith rule outlined in Md. Rule 2-431. They contend that Appellee failed to comply by not filing

a certificate describing her good faith attempts to discuss the discovery violations with Appellant, so that Appellant could cure the defects. Appellant asserts that "[h]ad [Appellee] complied with Md. Rule 2-431, [Appellant] would possibly have some idea what could be done to avoid the sanctions that were imposed throughout this litigation."

Appellee maintains that a certificate was not attached because those pleadings were sent to Appellant in mid to late January and there had been no attorney representing Appellant at that time. Appellee notes that the applicable rule states that the certificate should be filed with the opposing attorney, but there had been no attorney of record at that time. Moreover, Appellee submits that she had "considerable difficulty communicating effectively with [Appellant] since he did not want to listen to anything Appellee's attorney had to say or suggest." This difficulty was documented in various emails from Appellee to Appellant, detailing the missing documents, to which Appellee states Appellant responded that they were "irrelevant to the case."

B. Analysis

Md. Rule 2-431 states:

> A dispute pertaining to discovery *need not be considered* by the court unless the attorney seeking action by the court has filed a certificate describing the good faith attempts to discuss with the opposing attorney the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues.

(emphasis added). *See also Rodriguez v. Clarke,* 400 Md. 39, 65 (2007) (holding that parties must engage in a sincere attempt to resolve a discovery dispute.). The record reflects that Appellee attempted to communicate with Appellant regarding the production of the

requested documents, which Appellant ignored. Even so, trial courts are "vested with a reasonable, sound discretion in applying [the discovery rules], which discretion will not be disturbed in the absence of a showing of its abuse." *Falik v. Hornage*, 413 Md. 163, 182 (2010) (citations omitted). Appellant makes no showing that the trial court abused their discretion by hearing the discovery dispute, absent the certificate. Additionally, Md. Rule 2-431 does not require that a certificate be attached for the court to grant relief based on a discovery violation. The statute only indicates that the trial court is not mandated to entertain the dispute *absent* a certificate. Therefore, the rule is elective, in that the discretion to hear such a discovery dispute absent a certificate rests with the trial judge. Accordingly, we do not find that the court abused its discretion in hearing the discovery dispute absent a certificate of good faith.

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