Circuit Court for Montgomery County
Case No. 459939-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1661

September Term, 2019

SCOTT WEBBER

v.

HARRY R. FIELD

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

JJ.

Opinion by Sharer, J.

Filed: April 7, 2021

An unremarkable collision involving two passenger vehicles occurred on December 12, 2015, on Seven Locks Road in Montgomery County. Nearly three years later, a lawsuit was filed by appellant, Scott Webber,[1] against appellee, Harry R. Field, alleging negligence and seeking damages.[2] Appellant's Complaint was dismissed, pre-trial, with prejudice, by the Circuit Court for Montgomery County for his failure to comply with the discovery requirements of the Maryland Rules of Procedure and various court orders dealing with his discovery deficiencies.

The collision occurred near the center of the roadway when one of the vehicles crossed the center line. We need not otherwise detail the underlying facts of the collision, other than to report that one of the vehicles was owned by appellant and was being operated by his son, Ashton Webber-Deonauth. Appellant was not in the vehicle at the time, nor

[1] Appellant appears in this appeal, *pro se*, as he has throughout the litigation.

[2] Suit was filed in December 2018, just days before implication of the three-year statute of limitations. *See* Maryland Code, (1974, 2013 Repl. Vol.), Courts and Judicial Proceedings Article § 5-101. Thereafter, appellee's trial counsel notified appellant of her representation of appellee on behalf of appellee's insurer and maintained an ongoing email communication with appellant regarding his claim and counsel's attempts to gather information from appellant.

did he witness the collision. The other vehicle was operated by appellee, Harry R. Field. Appellant's claim is for property damages only.[3]

From that dismissal, and the court's denial of his motion for reconsideration, appellant has noted this timely appeal presenting eight questions for our review.[4,5]

[3] Appellant's Complaint limited his claim to property damage of $25,000 for damage to his vehicle and related expenses allegedly incurred as a result the accident. Nonetheless, in his pre-trial statement, appellant claims the "total relief … sought is $25,000 plus costs[,]" but then outlines the various "costs" with "TOTAL ACTUAL COSTS … IN EXCESS OF: $86,500." None of those claims are supported by the record.

In fact, those claims differ not only from those vaguely referenced in the initial Complaint, but also from those claims presented to appellee by appellant in his unsigned answers to appellee's propounded interrogatories, which were appended as an exhibit to appellee's motion to compel and his opposition to appellant's motion for reconsideration, in which also included a claim for $1,000,000,000 for the "[v]alue of lost time, increased stress, frustration, lost opportunity costs, & misc."

Additionally, without intending to implicate the collateral source rule, the record reveals that, following arbitration between the parties' liability insurers, appellant was compensated for the damages to his vehicle.

[4] In his opening brief, appellant asks:

1. Did the Court err as a matter of law by allowing one party – Defendant – to ignore the Court's Scheduling Order?

2. Are discovery requests made by a NON-party, or an attorney who has not entered their appearance on behalf of a party, valid requests?

3. Did the Court err as a matter of law by requiring discovery responses from Plaintiff to requests made by a NON-party person not yet associated with the case?

4. Did the Court err as a matter of law by refusing to modify the Scheduling Order to allow both parties the opportunity to conduct – and conclude - discovery?

We have distilled those questions to a single issue:

> Did the trial court abuse its discretion in granting appellee's motion to dismiss with prejudice?

Finding no abuse of discretion, we shall affirm the judgment of the circuit court.

Scheduling Order

We deal first with appellant's assertions that the court abused its discretion in not permitting amendment or expansion of the scheduling order to allow for additional discovery.

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5. Did the Court abuse its discretion by delaying a hearing on discovery disputes until 2 days before trial?

6. Did the Court err as a matter of law by first entertaining a motion, and then dismissing the case - before trial - based on a summary judgment determination, without the required Leave Of Court, nor the proper preliminary motion?

7. Did the Court err and abuse its discretion and exceed its authority by imposing sanctions based on a motion not properly before the Court?

8. Did the Court err and abuse its discretion and exceed its authority by dismissing a case prior to trial as a sanction for discovery violations after Plaintiff complied fully with the Court's discovery directives?

[5] In appellant's reply brief, he poses an additional question, which he claims is "merely a point of further clarification," related to the questions presented in his opening brief:

9. Does the 'Mailbox Rule' [MD Rule 1-203] allow a person admitted to the Maryland Bar - but not yet associated with an action - an extra 5 RETROACTIVE days to perform an act on behalf of a FUTURE [prospective] client BEFORE they file their appearances as the party's 'Attorney of Record'?

(Alterations and capitalization emphasis in original).

Maryland Rule 2-504 requires, with exceptions not here relevant, the entry of a scheduling order in every civil action. Rule 2-504(a)(1). Scheduling orders and case management are subject to the trial court's discretion and modification as the orderly progression of the case requires. *See Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 551 (2020) (explaining that a court's decision whether or not to modify a scheduling order and whether to impose sanctions for a party's failure to comply with a scheduling order are both subject to its sound discretion); Rule 2-504(c). Just as clearly, the court's action is subject to an abuse of discretion standard. *See, e.g., Manzano v. Southern Maryland Hospital, Inc.*, 347 Md. 17, 26-31 (1997) (holding that it was an abuse of discretion to dismiss petitioner's claim as a sanction for violating the scheduling order with a one-week delay in providing expert's deposition dates where the delay was not the fault of petitioner or counsel and there was no prejudice from the delay). We view appellant's motion seeking to modify the scheduling order to extend the discovery deadlines, filed within two days of the discovery deadline, as no more than a thinly-veiled attempt to gain additional time to provide, as well as to potentially seek, discovery when, in fact, he had not complied with the discovery deadlines in the scheduling order. The motions court so found, and we find no abuse of the court's discretion in that ruling.

The Motions

Appellant's opening brief and reply brief present scattershot and wide-ranging assertions of error and/or abuse of discretion which, in some respects, we find difficult to

comprehend in a coherent fashion.[6] Nonetheless, we focus on two extended motions hearings before the circuit court, and the rulings of the separate motions judge and trial judge who presided and ruled.

[6] Throughout his brief and reply brief, appellant suggests various events and actions by opposing counsel and the court were designed to prejudice his case. Those claims are no more than bald assertions and conclusions without support in the record, or in his respective briefs. They include:

- On the August 1, 2019 trial date, no jury was present in the courtroom to hear his case; thus, he posits, the court had predetermined the outcome of appellee's motion to dismiss. To the contrary, the court engaged both parties on their respective positions and afforded each ample opportunity to present their arguments at the hearing prior to the court issuing its ruling. Further, it is reasonable for us to assume that potential jurors were available for call from the assembly room, had it become necessary.

- On the day of trial, he and his son were on time, but appellee did not appear, and appellee's counsel was late to the proceeding and had failed to check in. Counsel explained that, being unfamiliar with the Montgomery County Courthouse, and the electronic message boards, she was somewhat confused as to the location of the hearing. The court accepted counsel's explanation and excused her tardiness.

- The court permitted a "NON-party" to participate. That reference is, we infer, to appellee's counsel and the timing of the entry of her appearance with the court. Despite having been timely notified by counsel through email that she was retained to represent appellee in the lawsuit and to direct all further communication to her, appellant took issue with the fact that she is an attorney for appellee's insurer and her failure to file an entry of appearance with the court. Counsel, when her client was properly served, filed a timely answer on appellee's behalf, which satisfied the relevant appearance requirements. *See* Md. Rule 2-131(c). Appellant also contends that the discovery that counsel propounded to him with appellee's answer to the Complaint, prior to the court docketing her appearance, was invalid and, thus, negated any requirement for him to respond. Such rationale is inconsistent with Maryland Rules, which affords that "a party's attorney may perform any act required or permitted by these rules to be performed by that party." Rule 1-331. Indeed, neither the motions court nor the trial court found merit in appellant's assertions.

At a motions hearing on July 30, 2019, the court considered the pre-trial motions of both parties and GEICO Casualty Company, including: GEICO's motion to quash subpoena and for protective order;[7] appellant's motion for protective order; and appellee's motion for sanctions, motion to compel, motion for summary judgment, and motion to dismiss.

After extensive argument, the motions court ruled on the record on each motion and entered a written order the following day, reflecting those rulings. The court:

- Denied appellant's motion for protective order as moot;
- Granted appellee's motion for sanctions in part, limiting appellant's ability to introduce documents not previously provided and limiting evidence beyond the scope of discovery;
- Granted appellee's motion to compel in part and ordered appellant to provide signed answers to interrogatories no later than 12:00 noon on July 31, 2019;
- Granted GEICO's motion to quash in part, limiting what it would be required to produce from its claim files;
- Denied appellee's motion for summary judgment; and
- Deferred appellee's motion to dismiss to the trial judge.

Specifically, the court's attention at that hearing was on appellee's motions relating to appellant's failure to respond to a request for production of documents and appellant's failure to provide timely answers to interrogatories. The court found (1) that appellant did not adequately respond to the request for production of documents and (2) that appellant

We find no substance to any of those claims; hence, we give them no consideration in our discussion of the narrow issue presented in this appeal.

[7] GEICO was appellant's insurer. Appellee's trial counsel, not having received requested documents or other discovery from appellant, issued a subpoena to GEICO for its records of appellant's claim. GEICO's counsel responded to the subpoena and attended the hearing, but GEICO was never joined as a party.

did not submit responsive or adequate answers to interrogatories. The court's findings are supported by the record and justify the court's grant of appellee's motions. We find no error in the court's findings as to appellant's discovery failures, and no abuse of discretion in the court's granting in part of appellee's motions.

On the designated trial date, August 1, 2019, the trial judge convened a hearing to address unresolved motions, particularly appellee's motion to dismiss, a ruling on which had been deferred by the motions judge. Again, extensive argument was heard by the court, following which the court explained its ruling and rationale, applying the relevant factors as outlined in *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 725–26 (2002),[8] opining in relevant part:

> … With respect to [the] issues of discovery and the motion to dismiss [due to] the violation of the discovery rules. There are five factors that the Court must consider in imposing sanctions. A dismissal of the case being a sanction. First, the Court must consider whether the disclosure violation was technical or substantial. Next the Court must consider the timing of any ultimate disclosure. Third, the Court must consider the reason, if any, for any violation. Four[th], the Court must consider the prejudice to the parties. Respectively offering and opposing the evidence. And finally, the Court must consider whether any result in prejudice might be cured by a postponement[,] and if so[,] the overall desirability of a continuance.
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> * * *

[8] In *Hossainkhail v. Gebrehiwot*, this Court articulated five factors that

> are used to guide a trial court's decision to impose sanctions: (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.

143 Md. App. at 725–26 (citing *Taliaferro v. State*, 295 Md. 376, 390–91 (1983)).

In turning to the issue of whether or not the violations are technical or substantial[,] the Court finds that the violations are indeed substantial and not at all technical in nature.

The entirety of the request for production of documents were [sic] not responded to. Even if it were to say … those are contained within the GEICO documents[,] there is no response and it is a complete failure of discovery requests. The Court wanted to get a flavor of what [were] some of the items that were requested in the request for production and they are the standard types of documents associated with any claims for damages and the damages are an essential element of any negligence claim. And there was no response whatsoever.

* * *

When it comes to the issue of sanctions, however, the Court notes that with respect to the interrogatories requesting the identification of witnesses, other than the identification of the driver of the vehicle, his son, you've got a complete failure to identify and be responsive to the specific questions that were asked of him. When it came to identifying all of the witnesses, all of the experts, there was a general reference to members of the Montgomery County Police Department, that is not responsive to an identification question.…

But, generally, you're referring to the Montgomery County Police Department and anyone who was involved in the investigation is utterly not responsive to that question. Referencing a crash report is not responsive to that question….

[T]he responses to the questions concerning each of the items that were claimed as damages, … none of those items were actually answered at interrogatory ten. It was simply a recitation of what was sought, not the amount and basis for that amount being requested….

In terms of the factor for the timing of the disclosure[,] there simply wasn't even in this case a belated disclosure. The plaintiff's reference to the fact that he could not respond because he was ordered not to respond by [the motions hearing judge] and that he couldn't respond until the Court had made its ruling is erroneous. There is in the rules of discovery an obligation to not only respond, but to respond timely and to respond with supplemental responses as new information comes to your attention.

> It is not permitted under either the rules or case law that has interpreted those rules that because they didn't comply with something or because the other side didn't do something that somehow means that you don't have to do something. The rules of discovery apply regardless of any other failings or any other failures that may or may not be appropriate….
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> Next the Court must consider the reason, if any, for the violation. And I discussed some of those factors in that the plaintiff asserts that he was not given any ability … to respond because there was not a ruling by the Court until two days ago. Again, that is not the law. When you have an issue with a requested item of discovery it is the obligation of the party from whom discovery is sought to file a motion for a protective order. That still does not in any way have in this case any bearing because none was filed. You simply didn't respond.
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> And the Court, of course, must consider the degree of prejudice. And in this case, there is complete prejudice to the defense given the failures of some of these key items of discovery at least with respect to the interrogatories that were answered and the deficiencies [therein] as well as an absolute dearth of response to the request for production of documents.

With those findings, the court granted appellee's motion to dismiss with prejudice.[9] Appellant's subsequent motion for reconsideration was denied, and this appeal followed.

Standard of Review

The standard under which we consider this appeal is clear. Indeed, there is no need for us to engage in an extensive review of applicable legal precedents, nor, as is said, to reinvent the wheel. Maryland law is settled on the subject, as reported by Judge James Eyler, writing for this Court, in *Sindler v. Litman*, 166 Md. App. 90, 122–23 (2005):

> Maryland law is well settled that trial courts have "broad discretion to fashion a remedy based on a party's failure to abide by the rules of discovery." *Warehime v. Dell*, 124 Md. App. 31, 43 (1998) (citing *Bartholomee* [*v. Casey*, 103 Md. App. 34, 48 (1994))][.] [(citation omitted)].

[9] Appellant suggests that the trial court granted summary judgment. That is inaccurate. The court clearly and unequivocally granted appellee's motion to dismiss as a sanction for discovery violations.

> In order to impose sanctions, a court need not find willful or contumacious behavior. *Warehime*, 124 Md. App. at 44. Rather, in imposing sanctions, a trial court has "considerable latitude." *Id*. (citing *Miller v. Talbott,* 239 Md. 382, 387 (1965)).
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> 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. *Warehime*, 124 Md. App. at 44. Accordingly, we may not reverse unless we find an abuse of discretion. *Id*. In *Mason v. Wolfing*, 265 Md. 234, 236 (1972), the Court stated: "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." [(citations omitted)].
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> As the Court of Appeals has stated:
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> > There is an abuse of discretion "where no reasonable person would take the view adopted by the [trial] court[ ]" … or when the court acts "without reference to any guiding rules or principles." An abuse of discretion may also be found where the ruling under consideration is "clearly against the logic and effect of facts and inferences before the court [ ]" … or when the ruling is "violative of fact and logic." In sum, to be reversed "[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable."
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> *Wilson v. Crane*, 385 Md. 185, 198–99 (2005) (quoting *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312–13 (1997) (internal citations omitted)).

That standard was more recently reinforced by this Court in *Valentine-Bowers v. Retina Group of Washington, P.C.*, 217 Md. App. 366, 378 (2014), wherein we said that "Maryland Rule 2-433(a)(3) gives trial courts broad discretion to impose sanctions for discovery violations." There, we observed that, as in the instant case, the court "noted and analyzed" each of the five factors we had articulated in *Hossainkhail v. Gebrehiwot, supra*. *Valentine-Bowers*, 217 Md. App. at 378–79.

We need say nothing more: appellant failed to timely provide appropriate signed and adequately responsive answers to appellee's reasonable interrogatories and failed to provide any documents as requested.

The trial court's dismissal with prejudice was not an abuse of discretion.

JUDGEMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.