Circuit Court for Montgomery County
Case No. 453401V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1682

September Term, 2019

LAURETTA Z. WHITE, ET AL.

v.

HIGHER MISSION, LLC, ET AL.

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

JJ.

Opinion by Graeff, J.

Filed: June 25, 2021

This case arises from an agreement between appellants, Lauretta White and Andrea Wiley, and appellees, Higher Mission, LLC ("Higher Mission") and Higher Purpose, LLC ("Higher Purpose").[1] Pursuant to the agreement, appellant sold 96% of their interest in Sugarloaf Enterprises, LLC ("Sugarloaf"), a limited liability company formed by appellants in 2015. A contractual dispute arose, and appellees sought arbitration. Appellants filed a complaint in the Circuit Court for Montgomery County, alleging that the agreement was invalid and requesting a stay of arbitration. The court denied appellants' motion and granted appellees' motion to compel arbitration and stay the civil action ("motion to compel arbitration"). After the Arbitrator entered an award favoring appellees, the court confirmed the Arbitrators' award.

On appeal, appellants present the following questions for this Court's review, which we have combined and rephrased as follows:

1. Did the circuit court err in denying appellants' right to due process when it denied their motion to stay arbitration and granted appellees' motion to compel arbitration?

2. Did appellants receive ineffective assistance of counsel?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

[1] Lashima Barton also was a party in the case, but she did not file a notice of appeal. Ms. Wiley did file a notice of appeal, but she did not file an appellate brief. Appellees note that, pursuant to Maryland Rule 8-502(d): "If an appellant fails to file a brief within the time prescribed by this Rule, the appeal may be dismissed pursuant to Rule 8-602(c)(5)." Ms. White asks that we exercise our discretion in this matter and not dismiss Ms. Wiley's appeal because "Ms. Wiley chose not to burden this Court with a duplicative brief." As Ms. White notes, "any number of appellants . . . may join in a single brief" pursuant to Md. Rule 8-502(a)(7). Ms. Wiley, however, did not join Ms. White's brief. Because there was no brief setting out Ms. Wiley's contentions of error, we shall dismiss her appeal.

FACTUAL AND PROCEDURAL BACKGROUND[2]

In 2015, Ms. White formed Sugarloaf with her daughter, Ms. Barton, and she filed an application for a dispensary license for medical marijuana. In March 2015, Ms. White created Sugarloaf Wellness Center, LLC ("Wellness Center"), with Ms. Wiley and family members as members, reserving 46% of the membership interests for an "option pool" and for "First Employees."

On December 9, 2016, the Maryland Medical Cannabis Commission ("MMCC") granted Sugarloaf a Stage I pre-approval. To receive a Medical Cannabis Dispensary License ("MCDL"), Sugarloaf had to meet certain requirements, including raising substantial capital. Ms. White determined that she would need to raise approximately $1,500,000, and she began to solicit investors. She offered prospective investors a 35% membership interest in Sugarloaf in exchange for a $1,500,000 investment. Ms. White was unable to secure an investor prior to the Stage II application deadline, and she filed for and was granted an extension to March 9, 2018.

On January 29, 2018, approximately six weeks prior to the revised deadline of March 9, 2018, Ms. White and Ms. Wiley met with Mr. and Mrs. Horcasitas, who had expressed interest in investing in Sugarloaf. During that meeting, the Horcasitases advised that they would not invest for a 35% membership interest, but they indicated that they were

[2] The record indicates that there was no transcript made of the proceedings before the Arbitrator, so the facts set forth are taken from the pleadings and the Arbitrator's decision.

amenable to investing capital in exchange for a 55% membership interest. Ms. White agreed to the Horcasitases' proposed terms.

On February 5, 2018, Ms. White, Ms. Wiley, and the Horcasitases resumed discussions regarding the proposed investment. Ms. White suggested that the parties retain Offit Kurman, Attorneys at Law, P.A. to handle the transaction. Following the February 5, 2018 meeting, Ms. White submitted a copy of Sugarloaf's operating agreement to Thomas McDowell, the Horcasitases' business manager.[3] On February 20, 2018, Ms. White apprised the Horcasitases that Ms. Wiley was no longer interested in participating in the parties' enterprise, but she sought to be reimbursed for the funds that she had invested into the business venture at that point.

On February 24, 2018, Ms. White requested from appellees the sum of $115,750, which was to be divided among Ms. Wiley, Ms. Barton, and herself to reimburse them for funds that they had invested in Sugarloaf. Ms. White testified that this amount was for non-equity claims, but Ms. Horcasitas testified that the parties agreed that appellees would own 96% of the company, with Ms. Barton retaining 4% with the option to purchase

[3] The Arbitrator stated that Ms. White "created two operating agreements for Sugarloaf, one showing Ms. Barton as owner and the other showing [Ms. Willey, Ms. Barton], and Ms. White's other children as owners." "Ms. White gave the Sugarloaf operating agreement to Mr. McDowell that listed Ms. Barton as 100% owner," and "Ms. White testified that she gave them the other operating agreement as well. The Horcasitases deny that." Ms. White testified that she had not been named as a co-owner in the operating agreement because she previously had been charged with assault and owed back taxes to the Internal Revenue Service.

another 11% after the dispensary was approved.[4] That transaction was memorialized in a March 9, 2018 Membership Interest Purchase Agreement ("MIPA"), which stated that appellees purchased 96% of the membership interest in Sugarloaf, with 55% of the membership interest vested in Higher Purpose, 41% of the membership interest vested in Higher Mission, and 4% of the interest remaining in Ms. Barton, the seller.

The agreement contained an arbitration clause that stated, in § 7.10, as follows:

> (b) any dispute or controversy arising under this Agreement, which is unable to be resolved by good faith negotiations among the parties, shall be determined and resolved by binding arbitration in Towson, Maryland, in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect on the date the arbitration is commenced. . . .

Before the MIPA was signed, an Offit Kurman attorney circulated six transaction documents, including an Amended and Restated Operating Agreement of Sugarloaf ("Amended Operating Agreement"). Ms. White testified that she did not have time to read all the documents, given the deadline to submit them, but the Horcasitases told her that, after the documents were filed, they would discuss revisions to the operating agreement.[5]

[4] The Arbitrator found that, on February 27, 2018, "Ms. White reviewed and edited the draft of a status letter to be sent to the MMCC." "[A]s edited and sent," the letter "referred to the Horcasitases as the 'principal' owners[,] with Ms. Barton retaining a 4% interest with an option to purchase more at a later date."

[5] Although Ms. White denied having time to thoroughly edit the transaction documents, she did edit the Amended Operating Agreement, the revised version of which she sent to the Horcasitases. Those edits did not, however, address the parties' respective ownership interests in Sugarloaf. In addition to the Amended Operating Agreement and the MIPA, the above-referenced transaction documents included an Escrow Agreement, an

In June 2018, appellants requested that the parties rescind their agreement. The appellees conditionally agreed to do so, contingent upon appellants' ability to "buyout" their ownership, either themselves or with a potential investor. Appellees stated that they needed to be made "whole for all the money" they had invested in reliance on the agreement. The record reflects that appellants did not obtain funds or another investor to satisfy the requirements to rescind the contract.

On August 3, 2018, appellees filed a demand for arbitration with the American Arbitration Association ("AAA"). They sought, among other things, a declaration that the transaction documents were valid and enforceable and appellees owned 96% of Sugarloaf, as well as $115,434 in compensatory damages to cover debt obligations of Sugarloaf that were not disclosed.

On August 21, 2018, Ms. White, Ms. Wiley, and Ms. Barton filed, in the Circuit Court for Montgomery County, a complaint alleging that the agreement was void because it was induced by fraud. They also filed a motion to stay arbitration. In support, appellants alleged that: (1) they never agreed to the arbitration provision; (2) because the transaction documents were void in their totality, the arbitration agreement also was void; and (3) the dispute did not arise "under this Agreement," but rather, the dispute arose in connection with the formation of the Transaction Documents.

Option Agreement for the Purchase and Sale of Real Property, and two Assignments of Membership Interest.

Appellees then filed a motion to compel arbitration. They argued that, when the parties have agreed to arbitrate, but the scope of the arbitration clause is ambiguous, the arbitrator must resolve the ambiguity.

The circuit court determined that appellants did not show that the arbitration provision was invalid or unenforceable. With respect to the scope of the arbitration clause, the court found that it was "ambiguous," and therefore, it was "subject to determination by the arbiter." Accordingly, the court denied appellants' motion to stay arbitration and granted appellees' motion to compel arbitration.

On January 2, 2019, the Arbitrator concluded that the arbitration clause contained in the MIPA governed the scope of the parties' dispute. On February 4, 5, and 6, 2019, the Arbitrator held a hearing.[6]

Following the hearing, appellants filed a motion to reopen testimony, which sought to introduce evidence that one of appellees' exhibits was fraudulent. Although the Arbitrator denied appellants' motion, he granted the motion to strike the exhibit discussed, on the ground of lack of authenticity.

[6] The record does not include a transcript of the arbitration proceedings. Absent such a transcript, we generally defer to the Arbitrator's factual findings and the legal conclusions drawn therefrom. *Wicomico Cty. Educ. Ass'n, Inc. v. Bd. of Educ. of Wicomico Cty.*, 59 Md. App. 564, 569 (1984) ("When there is no transcript of the hearing before the arbitrator, the circuit court is totally without a means of resolving the factual disputes properly before it."). *Accord Downey v. Sharp*, 428 Md. 249, 266 (2012) (quoting *Bd. of Educ. of Prince George's Cty. v. Prince George's Cty. Educators' Assn.*, 309 Md. 85, 98–99 (1987)) ("[C]ourts generally defer[] to the arbitrator's findings of fact and applications of law. [. . .] [M]ere errors of law and fact [do] not ordinarily furnish grounds for a court to vacate or [to] refuse enforcement of an arbitration award.").

On February 27, 2019, the Arbitrator issued a written opinion. The Arbitrator concluded that appellants' assent to the MIPA had not been fraudulently induced, and it was a valid agreement. It denied appellees request for damages because it found that Ms. White had disclosed the debts of Sugarloaf prior to closing the transaction. The Arbitrator rejected appellants' claim that appellees breached an agreement to rescind the transaction. He found that, on June 16, 2018, "Ms. White and Ms. Barton met with the Horcasitases," during which meeting "[t]he Horcasitases offered three options for going forward," one of which was "rescission of the transaction and reimbursement of their expenses." Although "Ms. White accepted that alternative," appellants neither pursued nor secured an investor whose capital contribution could reimburse appellees the funds that they had invested, and therefore, appellants did not meet the requirements of rescission.

On March 21, 2019, appellants filed with the AAA a motion to clarify, modify, and/or correct the arbitration award. The Arbitrator denied this motion on March 30, 2019.

On July 1, 2019, appellants filed a Petition to Modify, Correct, or Vacate Arbitration Award, seeking a rehearing of the arbitration. On July 3, 2019, appellees filed a Petition to Confirm Arbitration Award, arguing that, because appellants had not sought to vacate the award within 90 days of the Arbitrator's ruling, the court should confirm the Arbitrator's award. Thereafter, appellants and appellees both filed responses to the others' petitions.

On September 23, 2019, the court held a hearing. It noted that appellants were "not arguing any of the statutory grounds in the Maryland Uniform Arbitration Act," but rather,

they were "arguing the common law" under the case of *WSC/2005 LLC v. Trio Ventures Associates*, 460 Md. 244, 260 (2018), wherein the Court of Appeals held that "an arbitration award subject to the MUAA may be vacated for manifest disregard of the law." Counsel for appellants asserted that one of their arguments was that the award should be vacated because the Arbitrator was "so palpably wrong" by "not look[ing] at both sides of the rescission argument." The court then questioned counsel regarding the filing deadline, noting that the deadline to request a vacatur was 30 days following the issuing of the Arbitrator's award, and appellants did not seek vacatur until 91 days after the Arbitrator issued his award.[7] Counsel for appellants conceded that the petition to vacate was not filed until 91 days after the Arbitrator issued his award, but she argued that "the statute does say that you can file the vacate and the modification together." The court responded that counsel's argument "did not fix the timing problem."

With respect to the petition to modify the award, which had a 90-day deadline to file, the court noted that the 90th day following the issuing of the Arbitrator's award was a Sunday, and therefore, under Md. Rule 1-203, the petition to modify was timely filed. With

[7] Md. Code Ann. Cts. & Jud. Proc. Art. ("CJ") § 3-224 (2013 Repl. Vol.) provides, in pertinent part: "a petition to vacate the award shall be filed within 30 days after delivery of a copy of the award to the petitioner." CJ § 3-223 provides, in pertinent part:

> (a) A petition to modify or correct the award shall be filed within 90 days after delivery of a copy of the award to the applicant.
>
> * * *
>
> (d) An application to modify or correct an award may be joined, in the alternative, with an application to vacate the award.

respect to modification, appellants' counsel requested that the court clarify the Arbitrator's award and explicitly allow appellants to purchase "up to another 11 percent" membership interest in Sugarloaf.

Appellees' counsel stated that they were not arguing that appellants' petition to modify was untimely, but "only their petition to vacate" was filed too late. Counsel argued that appellants could not extend the 30-day deadline of the petition to vacate by attaching the petition to vacate along with the petition to modify, which had a 90-day deadline. Moreover, counsel argued that modification was improper because the scenario alleged by appellants' counsel was not one listed in Md. Code Ann. Cts. & Jud. Proc. ("CJ") § 3-223(b) (2013 Repl. Vol.).[8]

At the conclusion of counsels' arguments, the court noted that the grounds on which a court can vacate an award are very limited. It found that there was nothing on the face of the arbitration award that permitted a finding that the arbitrator manifestly disregarded the law. It denied the petition to vacate the award on that ground, and because the petition

[8] CJ § 3-223(b) provides:

(b) The court shall modify or correct the award if:

> (1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award;
>
> (2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or
>
> (3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

was not timely filed within 30 days. With respect to the petition to modify the award, the court found that, without a transcript of the hearing, there was no basis to grant the relief. Accordingly, the court stated that it would confirm the arbitration award. On September 27, 2019, the court entered its order denying the appellants' petition and granting the appellees petition.

This appeal followed.

DISCUSSION

I.

Arbitration

Appellants contend that the circuit court erred in its initial decision to deny their motion to stay arbitration and grant appellees' motion to compel arbitration. Appellees contend that the appeal on this issue was filed too late, and it should be dismissed.

"Generally, a party may appeal only from a final judgment." *Rourke v. Amchem Prod., Inc.*, 153 Md. App. 91, 103 (2003), *aff'd*, 384 Md. 329 (2004); CJ § 12-301. An "order compelling arbitration is a final and appealable judgment of the trial court." *Ford v. Antwerpen Motorcars Ltd.*, 443 Md. 470, 476 (2015); Accord *Rourke*, 153 Md. App. at 107.

Pursuant to the Maryland Rules, an appeal from a judgment must be noted within 30 days of the entry of judgment. Md. Rule 8-202 ("Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken."). Although Md. Rule 8-202 is a claim-processing

rule, not a jurisdictional rule, the 30-day requirement "remains a binding rule on appellants." *Cty. Council of Prince George's Cty. v. Palmer Rd. Landfill, Inc.*, 247 Md. App. 403, 421 (2020) (quoting *Rosales v. State*, 463 Md. 552, 568 (2019)).

Here the record reflects that the circuit court denied appellants' motion to stay arbitration and granted appellees' motion to compel arbitration on October 25, 2018. Ms. White, however, did not note her appeal until October 21, 2019, almost a year later. Accordingly, appellants' appeal from the circuit court's decision to compel arbitration was well beyond 30 days, and it was untimely. We shall, therefore, dismiss the appeal in that regard.

Appellants contend that they also are appealing the circuit court's order confirming the Arbitrator's award. They do not, however, provide a supporting argument as to this issue. Rather, appellants' assertion of error focuses almost exclusively on the issue of the court's decision to compel arbitration, which they allege deprived them of their right to due process. As indicated, the court's decision to compel arbitration was not timely appealed. Because there is not sufficient supporting argument relevant to appellants' claims regarding the court's decision to confirm the Arbitrator's award, we shall not address this issue. *See Health Servs. Cost Review Comm'n v. Lutheran Hosp. of Maryland, Inc.*, 298 Md. 651, 664 (1984) ("[A] question not presented or argued in an appellant's brief is waived or abandoned and is, therefore, not properly preserved for review.").

II.

Conflict of Interest

Appellants contend that the Offit Kurman attorney who prepared Sugarloaf's Stage II application impermissibly represented adverse parties, which constituted a conflict of interest. Appellees contend that appellants did not raise this issue with the circuit court, and therefore, that issue has been waived on appeal. In any event, they assert that, as the Arbitrator found, Offit Kurman had no attorney-client relationship with Ms. White, and therefore, there could be no conflict of interest. In support, appellees point to the fact that Ms. White asked another attorney to review documents that the Offit Kurman attorney sent to her to review and sign.

Initially, our review of the record does not show that this issue was raised in the circuit court. Therefore, we agree with appellees that the issue it is not preserved for this Court's review. *See* Md. Rule 8-131(a) (Ordinarily, the appellate court will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court."). Even if it were preserved for review, we would find it to be without merit. The Arbitrator determined that "there was no attorney client relationship between those [Offit Kurman] attorneys and [the appellants]." Such a factual determination is not subject to review, absent very specific circumstances set forth in CJ § 3-224,[9] none of which are

[9] CJ § 3-224 provides, in pertinent part:

(b) The court shall vacate an award if:

alleged here, and an attorney's conflict of interest is not listed as grounds to vacate an arbitrator's award.

III.

Ineffective Assistance of Counsel

Appellants contend that they received ineffective assistance of counsel. In support, appellants point to numerous alleged deficiencies, including: (1) counsel neglected to file a timely notice of appeal; (2) counsel was grossly unprepared for the September 23, 2019 hearing; (3) counsel was derelict in executing a sound litigation strategy; (4) counsel abandoned appellants following the September 23, 2019 hearing; and (5) counsel failed to submit key evidence, strike, or cross-examine witnesses the appellees called to testify.

> (1) An award was procured by corruption, fraud, or other undue means;
>
> (2) There was evident partiality by an arbitrator appointed as a neutral, corruption in any arbitrator, or misconduct prejudicing the rights of any party;
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> (3) The arbitrators exceeded their powers;
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> (4) The arbitrators refused to postpone the hearing upon sufficient cause being shown for the postponement, refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of § 3-213 of this subtitle, as to prejudice substantially the rights of a party; or
>
> (5) There was no arbitration agreement as described in § 3-206 of this subtitle, the issue was not adversely determined in proceedings under § 3-208 of this subtitle, and the party did not participate in the arbitration hearing without raising the objection.

Appellees contend that, because this is a civil case, there is not a constitutional right to effective assistance of counsel that "provide[s] a basis for relief." We agree.

The Sixth Amendment to the United States' Constitution, made applicable to the states by the Fourteenth Amendment and Article 21 of the Maryland Declaration of Rights, guarantees *criminal defendants* adequate representation of counsel. *See Porterfield v. Mascari II, Inc.*, 374 Md. 402, 432 (2003) ("Article 21 of the Maryland Declaration of Rights applies solely to criminal prosecutions and provides that every criminal defendant is 'allowed counsel.'"). A party to a civil suit, on the other hand, does not automatically have a Sixth Amendment constitutional right to counsel. *Abrishamian v. Wash. Med. Grp., P.C.*, 216 Md. App. 386, 407 (2014). *But see Zetty v. Piatt*, 365 Md. 141, 156 (2001) (A right to counsel attaches in a civil proceeding involving possible incarceration, such as civil contempt proceedings.).

Given that this was not a civil proceeding in which appellants' liberty was in jeopardy, they did not have a constitutional right to the effective assistance of counsel. As appellees note, had counsel been ineffective, "[t]he appropriate remedy . . . is a suit against the attorney for legal malpractice." Appellants contention that the Arbitrator's decision should be vacated due to ineffective assistance of counsel is without merit.

APPEAL OF ORDER GRANTING MOTION TO COMPEL ARBITRATION DISMISSED. APPEAL OF ANDREA WILEY DISMISSED. JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY OTHERWISE AFFIRMED. COSTS TO BE PAID BY APPELLANT LAURETTA WHITE.