UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1926

September Term, 2015

OBED NORMAN

v.

MORGAN STATE UNIVERSITY, ET AL.

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 5, 2017

Obed Norman, appellant, was employed as a tenure track professor at Morgan State University. Norman was denied tenure, and his tenure track appointment ended in June 2011. Norman, subsequently, filed an employment discrimination claim against Morgan State University, *et al*. ("MSU"), appellees, and the parties settled the claim in 2012. The terms of the settlement agreement provided that Norman would be appointed to a full-time, contractual, non-tenure track "Lecturer" position for the 2012-13 academic term, after which his employment with MSU would terminate, but that he would be permitted to "apply for any non-tenure track position at MSU for which he is qualified."

In 2014, Norman filed a lawsuit against MSU, in the Circuit Court for Baltimore City, claiming, *inter alia*, that MSU breached the aforementioned provision of the settlement agreement by preventing him from applying for an external research grant that, he alleged, would have funded a position for him.[1] The circuit court granted summary judgment in favor of MSU, ruling that Norman failed to meet his burden of proving that he was entitled to seek continued employment with MSU through external grant application, and that there was no dispute of material fact, and, therefore, that MSU was entitled to judgment as a matter of law. On appeal, Norman contends that applying for a research grant is the same thing as applying for a non-tenure track position, and, therefore, by refusing to process his grant application, MSU breached the settlement

[1] Norman's complaint also included claims of employment discrimination and failure to pay compensation.

agreement.[2] Upon a thorough review of the record, we affirm the circuit court's grant of summary judgment.

Maryland Rule 2-501(f) governs motions for summary judgment and provides that a trial court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." The standard of review applicable to motions for summary judgment is as follows:

> Whether a circuit court's grant of summary judgment is proper in a particular case is a question of law, subject to a non-deferential review on appeal. As such, in reviewing a grant of summary judgment, we review independently the record to determine whether the parties generated a dispute of material fact and, if not, whether the moving party was entitled to judgment as a matter of law. We review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the well-plead facts against the moving party.

Amster v. Baker, 229 Md. App. 209, 220 (2016) (citation omitted).

[2] In his reply brief, Norman introduces additional grounds in support of his claim that the circuit court's order should be reversed, asserting that there is a genuine dispute of material fact with respect to allegations in his complaint that MSU engaged in discriminatory and retaliatory employment practices. These contentions are not properly before the Court as they were not included in Norman's initial brief. *See FutureCare NorthPoint, LLC v. Peeler*, 229 Md. App. 108, 213, n.16 (2016) (stating that "[g]enerally, this Court has no obligation to address grounds that a party does not include in the initial brief.") (citations omitted); *Honeycutt v. Honeycutt*, 150 Md. App. 604, 618, *cert. denied*, 376 Md. 544 (2003) (holding that where parties fail to present an argument in their initial brief, the argument has been waived, and the appellant court need not address it.) Even if Norman had not waived the argument, however, it would still not be reviewable on appeal because the circuit court based its decision solely on its finding that Norman had not met his burden of proving that the settlement agreement allowed him to seek funding for a position at MSU through external grant application. *See Amster v. Baker*, 229 Md. App. 209, 220 (2016) (holding that, ordinarily, an appellate court considers only the grounds upon which the trial court relied in granting summary judgment.)

In the instant case, there is no dispute of material fact. Rather, the issue centers on a question of contract interpretation, specifically, the clause in the settlement agreement stating that "the parties agree that Dr. Norman may apply for any non-tenure track position at MSU for which he is qualified."

"Settlement agreements are enforceable as independent contracts, subject to the same general rules of construction that apply to other contracts." *Kaye v. Wilson-Gaskins*, 227 Md. App. 660, 677, *cert. denied*, 449 Md. 420 (2016) (citation omitted). "When the language of the contract is plain and unambiguous there is no room for construction, and a court must presume that the parties meant what they expressed." *Id.* at 678 (citation omitted).

The language of the provision at issue in the instant case is plain and unambiguous. It permits Norman to apply only for a non-tenure track position at MSU for which he is qualified.[3] Norman did not apply or attempt to apply for a non-tenure

[3] Norman contends that the language at issue is a "recital of exclusions." In other words, he suggests that, rather than reading the clause as permitting him to apply only for a "non-tenure track position at MSU for which he is qualified," as the plain language suggests, he urges that we interpret the language to mean that he is excluded only from applying for (1) a tenure track position and (2) a position for which he is not qualified, and that, other than those two "exclusions," "the entire universe of positions [is] available to him." He asserts that, because applying for an external research grant does not appear in the "recital of exclusions," he was, therefore, permitted to do so. We disagree. Where language of a contract is plain and unambiguous, as it is here, "our paramount concern as we seek to interpret the parties' agreement is to objectively determine what a reasonable person in the position of the parties would have intended this agreement to mean at the time it was effectuated." *Kaye*, 227 Md. App at 678. We conclude that a reasonable person in the position of the parties, who were mediating the settlement of an employment discrimination case based on MSU's denial of tenure status for Norman, would not have intended the limitless scenario that Norman suggests.

track position at MSU, however. Rather, he sought approval for an application for an external research grant that, if awarded, may have provided funding for a future position at MSU. But, there was no existing position for which Norman applied.

On appeal, Norman posits that he would not have agreed to a provision that did not allow him to seek employment in areas not supported by research grants. But, the agreement contains no language permitting him to apply for an external research grant through MSU, even if the grant may have provided funding for a position that, under the terms of the settlement agreement, he would have been entitled to apply for. Where, as here, the language of the agreement is plain and unambiguous, it "will not give [way] to what the parties thought that the agreement meant or intended it to mean." *Kaye*, 227 Md. App. at 678 (citation omitted).

Viewing the record in the light most favorable to Norman, as the non-moving party, we conclude that the circuit court properly granted summary judgment in favor of MSU.

ORDER OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.