Circuit Court for Baltimore City
Case No. 24-C-16-004224

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1958

September Term, 2017

DUDLEY L. BRADLEY

v.

SCHLACHMAN, BELSKY & WEINER P.A.

Kehoe,
Berger,
Sharer J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: January 22, 2019

In this legal malpractice case, the Circuit Court for Baltimore City granted summary judgment in favor of the appellee, Schlachman, Belsky & Weiner P.A. ("SBW"), finding that the negligence claim of appellant, Dudley Bradley ("Bradley"), was time-barred by Maryland's three-year statute of limitations.

In March 2008, Bradley retained SBW to represent him in a personal injury suit against an employee of the United States Postal Service ("USPS"). On July 28, 2016, Bradley filed a complaint alleging that SBW failed to comply with the notice requirements set forth in the Federal Tort Claims Act ("FTCA"). Following the completion of discovery, SBW filed a motion for summary judgment contending that Henry Belsky -- a principal of the law firm -- met with Bradley in March 2013 to inform Bradley that he may have a malpractice claim against SBW. SBW argued that Bradley's claim was time-barred because Bradley discovered his claim in the March 2013 meeting but did not file the complaint until July 2016. Bradley opposed the summary judgment motion, arguing that the alleged meeting with Mr. Belsky occurred in July 2013. As a result, according to Bradley, his malpractice claim was not time-barred. The circuit court agreed with SBW.

On appeal, Bradley poses one question, which we set forth *verbatim*.

> Whether the trial court erred in granting summary judgment on the ground that Mr. Bradley's legal malpractice action was barred by the statute of limitations.

For the reasons explained herein, we reverse and remand the case for further proceedings.

FACTS AND PROCEEDINGS

Following his professional basketball career, Bradley became a police officer and accepted employment with the Maryland Transportation Authority. On March 22, 2008,

Bradley was injured in a motor vehicle collision when a USPS employee struck Bradley's patrol vehicle. Thereafter, Bradley retained SBW to represent him in a worker's compensation claim and a FTCA lawsuit.

On March 21, 2011, Victor Sobotka, one of SBW's former attorneys, filed a complaint in the District Court of Maryland for Anne Arundel County. The complaint named Ronnie Belle -- the driver of the vehicle -- as a defendant, in addition to the corporation that owned the vehicle. Mr. Sobotka did not name USPS as a defendant or provide USPS with proper notice of the lawsuit.

In January 2013 -- while the District Court complaint was pending -- Mr. Sobotka terminated his employment with SBW. On February 4, 2013, Mr. Belsky sent Bradley a letter advising Bradley that Mr. Sobotka no longer worked for SBW and that Mr. Belsky was taking over the case. In the letter, Mr. Belsky further requested that Bradley schedule a time to discuss the case in person with Mr. Belsky. Notably, the letter did not contain Bradley's correct address.[1]

On March 18, 2013, Mr. Belsky sent Bradley a second letter through certified mail. The letter advised Bradley as follows:

* * *

> This letter is to confirm our conversation in my office on Friday, March 16, 2013 concerning your automobile accident of March 22, 2008. I explained that Mr. Sobotka left employment with our firm in January, 2013. Upon my review of the file, I noted that although notice was supplied to the United States Postal Service of the accident, proper notice was not given in a timely fashion nor was the United States Postal

[1] The record demonstrates that the letter was addressed to 1830 Clansford Road. In March 2013, Bradley's correct address was 9830 Clansford Road.

> Service named as a Defendant in the suit. The driver of the truck was sued, however, service was not obtained upon the driver. As I explained, I am going to proceed and dismiss the suit in that an employee of the United States Postal Service is exempt from suit.
>
> We discussed your various options during our meeting and you indicated that you would like to consider same.
>
> I would like to thank you for your understanding during the meeting.
>
> * * *

The letter was incorrectly addressed. Nevertheless, SBW obtained a certified mail receipt, which contained a signature bearing the name of Bradley's wife, Stefanie Bradley. In a deposition, Mrs. Bradley testified that she signed the receipt, although she did not recall receiving or giving the letter to her husband. Bradley testified that he never saw the letter.

Mr. Belsky and one of SBW's paralegals, Bonnie Talbott, both testified that they met with Bradley on Friday, March 15, 2013 to notify Bradley that he had a potential malpractice claim against SBW.[2] The meeting was scheduled for that day on Mr. Belsky's calendar as "5:45-6:00 meet w/ Dudley Bradley & Bonnie."

On March 18, 2013, Mr. Belsky sent the District Court a notice of dismissal in connection with the personal injury suit against Mr. Belle. The letter further indicated that it was carbon copied to Bradley. Bradley's address was not listed in the letter and Bradley testified that he saw the letter for the first time during discovery. On March 21, 2013, the District Court entered an order dismissing the complaint pursuant to Md. Rule 3-506.

[2] Ms. Talbott provided in an affidavit that the meeting occurred on March 16, 2013. In her deposition, Ms. Talbott stated that the affidavit contained a "typo" and that the correct date was March 15, 2013.

In an affidavit appended to his opposition to SBW's motion for summary judgment, Bradley expressly noted that he did not meet "with Mr. Belsky on March 16, 2013 as [Mr. Belsky] states in his affidavit."[3] Rather, Bradley stated in his affidavit that "[s]ometime in July, 2013, [he] met with Mr. Belsky … for the first and only time[.]" Bradley further testified in his deposition that he remembered the meeting taking place in July 2013 based on several facts. First, Bradley testified that "it was hot … [at] that point [I] was wearing short sleeves so it had to be sometime in July." Second, Bradley stated that at the time of the meeting, he was "working the 10:00 [p.m.] to 6:00 [a.m.] shift" and he "didn't get that [shift] until the end of June." Third, on July 18, 2013, Bradley met with an attorney to discuss bringing a lawsuit against SBW. Bradley testified that the July 18, 2013 meeting occurred "within three or four days" of the meeting with Mr. Belsky. Finally, Bradley testified that while he did not remember the exact date of the meeting with Mr. Belsky, he did "remember it was after the 4th" of July.

In contrast, SBW produced evidence demonstrating that the meeting occurred in March instead of in July 2013. SBW produced its office building's security sign-in sheets for the months of March and July 2013. According to the sign-in sheets, there is no record that Bradley visited the building in July. Nevertheless, there is an indication that he visited the building in March. On the March 15, 2013 "AFTER HOURS SIGN IN SHEET," Bradley noted that he was visiting "SBW," that he arrived at 6:01 PM, and that he left at

[3] This statement in Bradley's affidavit was in response to the first affidavit that Mr. Belsky filed, which provided that the meeting occurred on March 16, 2013. Mr. Belsky stated in a revised affidavit that the meeting took place on March 15, 2013.

6:09 PM.[4] When asked why he would have visited SBW's office if not to meet with Mr. Belsky, Bradley stated that he "could have went to that building … to get some papers from Mike [Davey]." Mr. Davey, a principal of SBW, previously represented Bradley in connection with a disability retirement benefits claim.

On July 18, 2013, Bradley met with, and subsequently retained Harold Dwin, Esquire to represent Bradley in a malpractice suit against SBW. On July 19, 2013, Mr. Dwin sent Mr. Belsky a letter advising Mr. Belsky that he represented Bradley.

During discovery, Mr. Dwin was ordered to produce handwritten notes from his July 18, 2013 meeting with Bradley. One page of his notes provided: "Two months ago, Belsky told him he messed up. No letter ever sent." That page was dated "7/18/2013." Mr. Dwin testified that Bradley told him he did not remember the exact date that he met with Mr. Belsky and that "[t]wo months ago" was an estimate. This note conflicted with Bradley's prior testimony that he met with Mr. Dwin "within three or four days" of his meeting with Mr. Belsky.

On July 28, 2016, Bradley commenced this suit.[5] Thereafter, SBW filed a motion for summary judgment contending that the claim expired in March 2016 because the evidence clearly demonstrated that Bradley and Mr. Belsky met in March 2013. SBW

[4] The date for this sign-in sheet was handwritten as "3-15-12[.]" SBW filed an affidavit from the building's property manager providing that the sign-in sheet was "a true and correct copy … for the date of Friday, March 15, 2013[.]"

[5] Prior to filing the complaint, Bradley and SBW entered into a tolling agreement, which suspended the statute of limitations period between May 2, 2016 and July 30, 2016. This agreement did not toll claims that had already expired, i.e. a claim that expired in March 2016.

argued that Bradley's testimony was insufficient to demonstrate a genuine dispute of material fact. The Circuit Court for Baltimore City denied SBW's summary judgment motion without holding a hearing.

On August 17, 2017, SBW filed a second motion for summary judgment. In that motion, SBW attached additional evidence including the security sign-in sheets and the notes from Mr. Dwin's meeting. SBW further attached a copy of Mr. Belsky's calendar, which indicated that Mr. Belsky was out of the office recovering from surgery between June 24 and August 12, 2013. In a memorandum opinion, the circuit court granted SBW judgment as a matter of law, finding as follows:

> * * *
>
> In the instant case, the Complaint is barred by the statute of limitations, which began to run on March 15, 2013 and expired on March 15, 2016. The facts presented in the record irrefutably show that Plaintiff visited Defendant's office on March 15, 2013 and was advised to retain independent counsel regarding a potential legal malpractice claim against Defendant. While Plaintiff offers an alternative theory of the events, the record is devoid of any evidence to suggest that his versions of the events are true and accurate.
>
> * * *
>
> After receiving notice of his legal malpractice claim against Defendant, Plaintiff hired Mr. Harold P. Dwin, Esquire. Mr. Dwin's notes from his meeting with Plaintiff on July 18, 2013 reveal that Plaintiff told Mr. Dwin during their meeting that Mr. Belsky informed him of his potential malpractice claim several months earlier. Mr. Dwin further validated this fact in his deposition testimony. *See* Dep. Of Harold P. Dwin, pgs. 30-32. Thus, Plaintiff's theory is further discredited by Mr. Dwin, the attorney he hired to represent him against Defendant.
>
> The record also illustrates numerous other pieces of evidence to corroborate Defendant's argument, including Mr.

> Belsky's 2013 calendar and a letter sent to Plaintiff by Mr. Belsky. While this Court must resolve all inferences in favor of the party opposing summary judgment, "[t]hose inferences … must be reasonable ones." *Hamilton*, 439 Md. at 523. There is simply no evidence upon which a jury could *reasonably* find for Plaintiff. *Id.* (emphasis added). The record is abundantly clear that Plaintiff was present at Defendant's office on March 15, 2013.

* * *

Based on the evidence presented before the motions court, we conclude that questions of material fact exist, and therefore, the circuit court erred in granting judgment as a matter of law.

STANDARD OF REVIEW

Bradley challenges the circuit court's grant of summary judgment. In an appeal from the grant of summary judgment, we conduct a *de novo* review to determine whether the circuit court's conclusions were legally correct. *D'Aoust v. Diamond*, 424 Md. 549, 574 (2012).

Under the Maryland rules, a circuit 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." Md. Rule 2-501(f).

"The purpose of the summary judgment procedure is not to try the case or to decide the factual disputes, but to decide whether there is an issue of fact, which is sufficiently material to be tried." *Jones v. Mid-Atl. Funding Co.*, 362 Md. 661, 675 (2001) (citations omitted). "To establish a genuine issue of material fact, a 'party opposing summary

judgment must do more than simply show there is some metaphysical doubt as to the material facts. In other words, the mere existence of a scintilla of evidence in support of the plaintiff's claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff.'" *Woznicki v. GEICO Gen. Ins. Co.*, 443 Md. 93, 118 (2015) (quoting *Butler v. S & S P'ship*, 435 Md. 635, 665-66 (2013)). We view the evidence in the light most favorable to Bradley as the nonmoving party. *Jones*, *supra*, 362 Md. at 676.

DISCUSSION

The circuit court awarded SBW judgment as a matter of law and concluded that Bradley's claim was barred by the statute of limitations. "In Maryland, a three-year statute of limitations applies to legal malpractice actions pursuant to" Md. Code (1973, 2013 Repl. Vol.), § 5-101, of the Courts and Judicial Proceedings Article ("CJ"). *Supik v. Bodie, Nagle, Dolina, Smith & Hobbs, P.A.*, 152 Md. App. 698, 712 (2003) (citations omitted). CJ § 5-101 provides:

> A civil action at law shall be filed within three years from the date it accrues unless another provision of the Code provides a different period of time with which an action shall be commenced.

Bradley had three years from the date his cause of action accrued to file a timely complaint. The date of accrual begins "on the date when the plaintiff knew or, with due diligence, reasonably should have known of the wrong." *Supik*, *supra*, 152 Md. App. at 713 (citations and internal quotations omitted). "[O]nly when there is no genuine dispute of material fact as to when the action accrued, should a trial court grant summary judgment

on the basis of limitations; otherwise, the question is one of fact for the trier of fact." *Id.* at 710-11; *see also Doe v. Archdiocese of Wash.*, 114 Md. App. 169, 176 (1997) ("When the viability of a statute of limitations defense hinges on a question of fact … the factual question is ordinarily resolved by the jury, rather than by the court.").

Bradley contends that the circuit court erred in granting SBW's summary judgment motion because his testimony demonstrated a genuine dispute of material fact. Bradley further argues that the court disregarded his testimony, improperly weighed evidence, and made credibility determinations. SBW takes the opposing position that summary judgment was proper because no reasonable juror could find in favor of Bradley.

In our view, summary judgment was improper because Bradley's affidavit and his deposition testimony presented a material fact in dispute, i.e. that Bradley did not meet with Mr. Belsky in March 2013. Bradley and SBW agree that the statute of limitations accrued when Bradley and Mr. Belsky first met. The parties disagree when that meeting took place. Although a jury may certainly conclude that Bradley's evidence is not persuasive, the circuit court was not permitted to "disregard the otherwise admissible content of" his affidavit and his deposition testimony. *See Pittman v. Atl. Realty Co.*, 359 Md. 513, 539 (2000).

In *Pittman*, the Court of Appeals was presented with a similar issue of disputed facts. In that case, in response to a motion for summary judgment, the plaintiff filed an affidavit that directly contradicted a statement in the affiant's prior deposition that would have precluded recovery. 359 Md. at 523-24. The circuit court struck the affidavit and granted the defendant's summary judgment motion. *Id.* at 524-25. The Court of Appeals

reversed, holding that Maryland courts are only "authorized to disregard the otherwise admissible content of an affidavit in opposition to a motion for summary judgment" when the following test is satisfied:

> [T]here are certain basic claims that witnesses might make that are not provably false but are so wildly implausible and unbelievable that no rational jury would be allowed to return a verdict on the basis of such testimony. These consist of claims and defenses that rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them, and they are no rarity in federal courts. For more than a century, our legal system has provided that a factual question will not reach a jury merely because some evidence has been introduced by the party having the burden of proof, unless the evidence be of such character that it would warrant the jury in finding a verdict in favor of that party. The judge cannot discharge that responsibility unless he is willing, when necessary, to reject even the sworn claims of an eyewitness that are literally incredible -- even on a motion for summary judgment.

Id. at 538-39 (citations and internal quotations omitted).[6]

In this case, we "cannot conclude that a rational jury would reject *as incredible* the facts stated in" Bradley's affidavit and deposition testimony. *Id.* at 539 (emphasis added). Critically, Bradley produced admissible evidence to support his contention that he did not discover the malpractice claim -- as SBW alleges -- in March 2013. Indeed, Bradley signed an affidavit that he "met with Mr. Belsky … for the first and only time" in July 2013 and

[6] Following the Court's decision in *Pittman*, Maryland adopted Md. Rule 2-501(e). Under this modified version of the "sham affidavit" doctrine, courts are authorized to strike affidavits that contradict the affiant's prior testimony. This case does not involve any allegation of a sham affidavit, and therefore, Md. Rule 2-501(e) is not implicated. Moreover, while *Pittman* was technically superseded by that rule, it remains applicable for determining the type of fact that is so "incredible" that a rational juror could not believe it. *See, e.g.*, *Mitchell v. Balt. Sun Co.*, 164 Md. App. 497 (2005).

that he did not see Mr. Belsky's letters. Bradley further testified in his deposition that the meeting with Mr. Belsky took place "within three or four days" of his July 18, 2013 meeting with Mr. Dwin. In addition, Bradley testified that he remembered the meeting occurring shortly after the Fourth of July. Finally, Bradley noted that at the time of the meeting, he was "working the 10:00 [p.m.] to 6:00 [a.m.] shift" and that he "didn't get that [shift] until the end of June [2013]."

Although SBW produced a significant amount of credible evidence refuting Bradley's testimony, none of SBW's evidence is so conclusive as to render Bradley's testimony "incredible." We, therefore, hold that the circuit court erred in determining under these circumstances that no reasonable juror could find in favor of Bradley. *See Mitchell v. Balt. Sun Co.*, 164 Md. App. 497, 521 (2005) (applying *Pittman* to hold that, "although Congressman Mitchell's deposition testimony … is somewhat contradictory, [r]easonble persons, based on their real life experiences, may not be persuaded that [Congressman Mitchell's] failure to be consistent … means that the testimony most favorable to [him] cannot be believed.") (citations and internal quotations omitted).

Moreover, we are not persuaded by SBW's reliance on the United States Supreme Court's decision in *Scott v. Harris*, 550 U.S. 372 (2007). In *Scott*, the Supreme Court explained that "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record so that no reasonable juror could believe it, a court should not adopt that version of facts for the purpose of ruling on a motion for summary judgment." *Id.* at 377.

In our view, Bradley's account of the events is not inconceivable. In *Scott*, the Supreme Court held that the plaintiff's testimony was unbelievable by any rational juror because his version of the facts was "blatantly contradicted by the record." *Id.* at 380. There, the plaintiff was involved in a high-speed car chase with a police officer. *Id.* at 374-75. The plaintiff asserted that he was not driving in a manner that endangered human life. *Id.* at 378-79. Importantly, the record before the Supreme Court contained a videotape that captured the car chase in its entirety. *Id.* The videotape depicted the plaintiff driving in a manner that "resembled a Hollywood-style car chase of the most frightening sort, placing police officers and innocent bystanders alike at great risk of serious injury." *Id.* at 380.

Unlike the plaintiff in *Scott*, Bradley produced evidence that was sufficient to demonstrate a genuine dispute of material fact. While Bradley's evidence was rebutted by other facts in the record, none of the evidence SBW relies upon is so dispositive as to render Bradley's version of events incredible or unbelievable. Critically, this record does not contain any demonstrative evidence placing Bradley and Mr. Belsky in the same room on March 15, 2013. By contrast, SBW produced its office building's visitor sign-in logs, employee testimony, and a letter from Mr. Belsky to demonstrate that Bradley and Mr. Belsky met on March 15, 2013. While this evidence is compelling, there is nevertheless a dispute of material fact generated by the evidence as to the date of the meeting.

Put simply, SBW's evidence is strong and it places significant doubt on Bradley's testimony. This evidence does not, however, render Bradley's version of events incredible. As such, this record contains a genuine dispute of material fact that should have been presented to a jury. *See Supik*, *supra*, 152 Md. App. at 712 ("When the viability of a statute

of limitations defense hinges on a question of fact … the factual question is ordinarily resolved by the jury, rather than by the court.") (internal quotations omitted).

SBW further maintains that summary judgment was proper because Bradley failed to proffer specific facts in support of his position. Rather, SBW contends that Bradley provided the circuit court with "a different theory of how the events transpired." *Benway v. Md. Port Admin.*, 191 Md. App. 22, 46 (2010). We disagree. Indeed, none of the cases SBW relies upon address instances where a nonmoving party offers admissible evidence to demonstrate a dispute of material fact.

To be sure, SBW cites to *Benway*, where we held that "to overcome a motion for summary judgment, [the nonmoving party] was required to provide more than general allegations which do not show facts in detail and with precision." 191 Md. App. at 47 (citations omitted). In *Benway*, we reviewed a decision from the Workers' Compensation Commission denying a widow's claim for death benefits. *Id.* at 24. The Commission denied the widow's claim, finding that her husband's injury did not occur in the scope of his employment duties, even though he was injured on the employer's premises. *Id.* at 29.

On appeal, we held that summary judgment was proper because the nonmoving party "failed to provide any evidence upon which a reasonable jury could find in her favor. She was unable to dispute the testimony of Benway's superiors or Mize at the Commission hearing; rather, she simply told the trial court that it should not believe their testimony, without basis." *Id.* at 46.

Although the widow in *Benway* submitted an affidavit, the facts alleged in the affidavit had no bearing on whether her husband deviated from his employment duties. *Id.*

at 30. By contrast, the affidavit provided that her husband "had permission to be at the Property to check on his employees." *Id.* Even if the widow had personal knowledge that her husband was permitted to be at the location, that fact had no bearing on whether he engaged in the unauthorized act of stealing copper wire. *Id.* at 25. Therefore, we held that the widow failed to demonstrate a dispute of *material* fact, even if there was some dispute as to whether the husband had permission to visit that location. *Id.* at 46-47.

SBW further relies on our holding in *Cater v. Aramark Sports & Entm't Servs., Inc.*, 153 Md. App. 210 (2003) in support of its contention that the circuit court did not err as a matter of law. In that case, we held that "conclusory statements, conjecture, or speculation by the party resisting the motion will not defeat summary judgment[,] and an opposing party's facts must be material and of a substantial nature, not fanciful, frivolous, gauzy, spurious, irrelevant, gossamer inferences, conjectural, speculative, nor merely suspicions." *Id.* at 225 (citations and internal quotations omitted).

In our view, SBW's reliance on *Benway* and *Carter* is misplaced. Unlike in *Benway* and *Carter* -- where the nonmoving party relied on general allegations without any evidentiary support -- Bradley has put forth evidence to support his contention that he did not meet with Mr. Belsky in March 2013. Indeed, Bradley provided in an affidavit and in deposition testimony that he met with Mr. Belsky in July 2013. Clearly, Bradley's contention is not the type of general allegation insufficient to generate a question of material fact.

Finally, SBW urges us not to consider Mr. Dwin's notes because they contain inadmissible hearsay. The circuit court did not address this issue in its memorandum

opinion. As a result, we limit our opinion to the sole basis relied upon by the circuit court in granting SBW's motion for summary judgment. *Bishop v. State Farm Mut. Auto Ins.*, 360 Md. 225, 234 (2000) ("[I]t is a settled principle of Maryland appellate procedure that ordinarily an appellate court will review a grant of summary judgment only upon the grounds relied upon by the trial court.").

We, therefore, reverse the circuit court's order granting summary judgment on Bradley's malpractice claim, and remand the claim for the circuit court's consideration consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.