UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0049

September Term, 2015

JAEL FREEDMAN

v.

DARLA WRIGHT, ET AL.

Woodward,
Arthur,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 27, 2016

Two police officers allegedly "ordered" a woman to leap from the third floor of a burning building rather than stay and risk her life in the fire. The woman complied and suffered injuries upon landing. She sued the officers, claiming to have relied on their alleged assurances that she would be okay and that they would catch her. The officers moved to dismiss the complaint on several grounds, including the common-law doctrine of public official immunity. The Circuit Court for Baltimore City dismissed the claims against the officers. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Because this case comes to us on a motion to dismiss for a failure to state a claim, we assume as true all well-pleaded facts and the inferences reasonably drawn therefrom. *See, e.g.*, *Parks v. Alpharma, Inc.*, 421 Md. 59, 72 (2011).

At approximately 1:35 a.m. on March 9, 2013, the appellant, Ms. Jael Freedman, awoke to a disturbance in her apartment building. Ms. Freedman's daughter entered the room and said that people in the hallway were yelling. Ms. Freedman checked the hallway, noticed smoke, and (correctly) concluded that the building was on fire. Ms. Freedman quickly shut the door, but "[a]s the smoke began to fill her apartment," she claims to have become "confused" and "frightened" and to have gone into "a state of shock." She opened her windows so that she could breathe and went to the third-floor bedroom window to scream for help.

Help soon arrived. The appellees, Baltimore City Police Officers Nicholas J. Langan and Darla J. Wright "positioned themselves on the ground below her window"

and "ordered"[1] Ms. Freedman to jump. Ms. Freedman sat on the window ledge and hesitated. The officers, who had allegedly positioned themselves under the window, continued "ordering" Ms. Freedman to jump. Ms. Freedman asked if she would be okay. Officer Langan stated "I got you!," and both officers stated "you will be OK." At that time, fire engines could "be heard just a few blocks away."

Although Ms. Freedman does not allege that the officers had safety nets or other equipment to prevent her from injuring herself if she jumped, she claims to have believed that they would (somehow) break her fall. "[F]earing that the fire had crept into her apartment," she leapt from her third-floor window to apparent safety. Instead, Ms. Freedman hit the ground while the officers "did nothing" to catch her, break her fall, or attempt to catch her or break her fall. As a result, Ms. Freedman suffered various injuries.

Ms. Freedman sued both officers, her landlord, and the Baltimore City Police Department. The officers moved to dismiss the complaint for failure to state a claim. The court granted the motion and dismissed the complaint, without prejudice and with leave to amend.

Ms. Freedman amended her complaint, and the officers moved again to dismiss the amended complaint for failure to state a claim. The court granted that motion,

[1] The parties contest this characterization. The officers claim they merely "encouraged" Ms. Freedman to jump. Ms. Freedman alleges, in the alternative, that they "advised and/or directed" her to jump. We assume, for the sake of analysis, that the officers' vocalizations to Ms. Freedman can fairly be characterized as "orders."

dismissed the claims against the police department with prejudice, and dismissed the claims against the officers without prejudice. Ms. Freedman made no further effort to amend her allegations against the officers.

Several months later, Ms. Freedman and the remaining defendant – her landlord – stipulated to dismiss the case with prejudice. Ms. Freedman and the landlord submitted the stipulation "without any participation or approval by the court," *Hiob v. Progressive American Ins. Co*., 440 Md. 466, 495 (2014), and the stipulation "was not signed by either the clerk or the judge." *Id.* at 497.

Ms. Freedman appealed within 30 days of the docketing of the stipulation of dismissal.

FINALITY AND APPEALABILITY

In general, a party may appeal only "from a final judgment entered in a civil or criminal case by a circuit court." Md. Code (1974, 2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article. "One of the necessary elements of a final judgment is that the order must adjudicate or complete the adjudication of all claims against all parties." *See*, *e.g.*, *Zilichikhis v. Montgomery Cnty.*, 223 Md. App. 158, 171, *cert. denied*, 444 Md. 641 (2015). "Because the absence of a final judgment may deprive a court of appellate jurisdiction, we can raise the issue of finality on our own motion." *Id.* at 172.

The parties evidently believe that they have satisfied the requirement of finality through the combination of the order dismissing the officers and the police department

and the later stipulation of dismissal with prejudice of the remaining claims against the landlord. They are incorrect, because the stipulation of dismissal does not comply with the technical requirements of Rule 2-601(a), concerning the entry of judgment.

"[T]he existence of a final adjudication on all claims against all parties is necessary but not sufficient to begin the time for filing an appeal." *Hiob*, 440 Md. at 489. Under Rule 2-601(a), "[e]ach judgment" must also "be set forth on a separate document," and "[a] judgment is effective only when so set forth." In addition, "[o]ne of the formalities of Rule 2-601(a) is that the separate document be signed by either the clerk or the judge, depending on the type of judgment." *Hiob*, 440 Md. at 497.

In *Hiob*, the circuit court entered summary judgment in one defendant's favor, and the plaintiffs later filed a stipulation of dismissal of all claims against the remaining defendant. The plaintiffs, however, did not note their appeal within 30 days of the docketing of the stipulation of dismissal. Instead, they sought and obtained an order reducing the earlier order to a final judgment and appealed within 30 days of that subsequent order.[2]

The plaintiffs' adversary contended that the stipulation of dismissal was the final judgment in the case and, hence, that the plaintiffs' appeal was untimely. The Court of

[2] Technically, the Hiobs appealed before the clerk docketed that order. Nonetheless, but under Rule 8-602(d), their appeal was deemed to have been "filed on the same day as, but after, the entry on the docket." *See Hiob*, 440 Md. at 484.

Appeals disagreed, because the stipulation of dismissal did not satisfy the "separate document" requirement of Rule 2-601(a).

The Court explained that "the separate document itself" must "set forth the judgment by indicating that the issues have been fully adjudicated and that the court has reached a final decision." *Hiob*, 440 Md. at 486. The stipulation of dismissal, however, did not satisfy those formal requirements. *See id.* at 495 ("[a] voluntary dismissal, which is effected by the parties without any participation or approval by the court, does not provide any indication as to the court's intent and does not purport to set forth a decision by the court"); *id.* at 488 ("a voluntary dismissal by stipulation, which is not presented to the court for approval, is not an order of court and therefore is not a judgment"). Nor was the stipulation of dismissal "signed by either the clerk or the judge," as required by "a mechanical application of Rule 2-601." *Id.* at 497. Finally, neither the docket entry nor the stipulation itself indicated that the entry of summary judgment in the other defendant's favor had become a final judgment. *Id.* at 501.

In short, in *Hiob* the stipulation of dismissal did not satisfy the separate document requirement of Rule 2-601(a), because it did not take the form of a judgment, it did not comply with the language of the rule (which requires that the document be signed by the court or the clerk), and "its accompanying docket entry [did] not give a clear indication that final judgment for all the pending claims in the case had been entered." *Hiob*, 440 Md. at 501.

In *Hiob* the appellate courts had appellate jurisdiction because, after the docketing of the stipulation of dismissal, the circuit court signed a separate document evidencing a final judgment, and the Hiobs appealed within 30 days after the docketing of that document. In this case, by contrast, the court signed no such separate document. Instead, about 25 days after the docketing of the stipulation of dismissal of her claims against the landlord, Ms. Freedman filed a notice of appeal.

Under *Hiob*, it is beyond any serious dispute that the stipulation of dismissal in this case did not satisfy the separate document requirement of Rule 2-601(a). The stipulation "does not purport to set forth a decision by the court." *Hiob*, 440 Md. at 495. It is signed solely by counsel for Ms. Freedman and the landlord, and not by the court or the clerk. Finally, it contains no indication that the order dismissing the officers has become a final appealable judgment.

Because the stipulation of dismissal does not satisfy the separate document requirement, and because the court has signed no other separate document evidencing a judgment affecting all parties (as it did in *Hiob*), we do not yet have a final, appealable judgment in this case. *See Zilichikhis*, 223 Md. App. at 172 ("[a]n order that adjudicates the rights of fewer than all of the parties . . . is not an appealable final judgment"). At present, the court has formally adjudicated only the claims against the officers and the police department, not the claims against the landlord. Ms. Freedman's appeal, therefore, is premature.

"Nonetheless, in one narrow exception to the final judgment rule, a court may direct 'the entry of a final judgment . . . as to one or more but fewer than all of the claims or parties' if it 'expressly determines in a written order that there is no just reason for delay.'" *Id.* at 172 (quoting Md. Rule 2-602(b)). "Similarly, if a party has filed a notice of appeal before the entry of final judgment, but the trial court would have had discretion to enter a judgment under Rule 2-602(b), this Court may have discretion to enter a final judgment on its own initiative." *Id.* (citing Md. Rule 8-602(e)(1)(C)).

Had either Ms. Freedman or the officers requested the entry of judgment under Rule 2-602(b), the circuit court could reasonably have concluded that it had no just reason to delay the entry of a final judgment as to the officers alone – *i.e.*, that it had no just reason to delay the entry of final judgment "as to one or more but fewer than all of the . . . parties." Md. Rule 2-602(b)(1). Had the court entered a final judgment as to the officers, it would have freed them from the deleterious consequences of the pending tort claims against them. Because Ms. Freedman's claims against the officers were quite different, both factually and legally, from her claims against the landlord, the court could properly have entered final judgment as to the officers without frustrating the policy against repeated, piecemeal appeals involving the same issues. *See Canterbury Riding Condo. v. Chesapeake Investors, Inc.*, 66 Md. App. 635, 653-54 (1986) (in reviewing propriety of circuit court's decision to certify judgment as final under Rule 2-602(b), an appellate court should consider whether entertaining appeal would require it "to determine questions that are still before the trial court"). Moreover, in the circuit court,

the case is over in everything but the most technical of ways, especially now that Ms. Freedman has stipulated to the dismissal, with prejudice, of her claims against the remaining defendant. Consequently, now that the parties have fully briefed and argued the appeal, it would impose a hardship to dismiss it because of the failure to comply with a ministerial requirement and to remand it for the sole purpose of satisfying that requirement.

In summary, because the circuit court could have exercised its discretion under Rule 2-602(b) to enter a final judgment as to the officers, we hereby exercise our discretion to enter a final judgment as to them under Rule 8-602(e)(1)(C). *See Zilichikhis*, 223 Md. App. at 174; *McCormick v. Medtronic, Inc.*, 219 Md. App. 485, 506 (2014).

QUESTIONS PRESENTED

We have one question before us: Did the circuit court err in dismissing Ms. Freedman's amended complaint?

Because the officers were entitled to public official immunity, we conclude that the circuit court did not err in dismissing those claims.

DISCUSSION

Ms. Freedman contends that the circuit court erred in dismissing her complaint, because she claims to have set forth sufficient allegations to demonstrate a "special relationship" between the officers and herself. *See generally Ashburn v. Anne Arundel Cnty.*, 306 Md. 617, 628 (1986) ("absent a 'special relationship' between police and

victim, liability for failure to protect an individual citizen against injury caused by another citizen does not lie against police officers"). In other words, Ms. Freedman contends that her pleadings alleged facts sufficient to show that the officers "affirmatively acted specifically for [her] benefit or that [the officers'] actions induced [her] reliance upon [them]." *Id.* at 631-32.

The officers respond that Ms. Freedman has not alleged a "special relationship." They contend that, as a matter of law, they were not negligent; or that if they were, Ms. Freedman must have been contributorily negligent as well. Finally, the officers assert that they are immune from suit in this instance under Maryland's common-law doctrine of public official immunity.

We agree that the officers are immune from suit. We affirm and do not reach the remaining issues.

A. Standard of Review

"'In reviewing a motion to dismiss for failure to state a claim under Maryland Rule 2-322(b), trial and appellate courts must assume the truth of all well-pleaded, relevant, and material facts in the complaint and any reasonable inferences that can be drawn therefrom.'" *Hines v. French*, 157 Md. App. 536, 548 (2004) (quoting *Allied Inv. Corp. v. Jasen,* 354 Md. 547, 555 (1999)). A court, however, need not accept the truth of pure legal conclusions. *See, e.g.*, *Shepter v. Johns Hopkins Univ.*, 334 Md. 82, 103 (1994); *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 713 (2015); *John B. Parsons Home, LLC v. John B. Parsons Found.*, 217 Md. App. 39, 69 (2014) (quoting *Shenker v.*

Laureate Educ., Inc., 411 Md. 317, 335 (2009)) ("'[m]ere conclusory charges that are not factual allegations need not be considered'"). Moreover, "[a]ny ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader." *Shenker,* 411 Md. at 335; *Margolis*, 221 Md. App. at 713; *John B. Parsons*, 217 Md. App. at 69.

"A court should dismiss a complaint for failure to state a claim only if the alleged facts and reasonable inferences would fail to afford relief to the plaintiff." *Margolis*, 221 Md. App. at 713.

This Court conducts a *de novo* review of the circuit court's granting of a motion to dismiss, *see Gomez v. Jackson Hewitt, Inc.*, 427 Md. 128, 142 (2012); *Margolis*, 221 Md. App. at 713; applying the same standard as the circuit court and determining whether that decision was legally correct. *See Reichs Ford Road Joint Venture v. State Roads Comm'n*, 388 Md. 500, 509 (2005); *Margolis*, 221 Md. App. at 713-14. "The appellate court accords no special deference to the circuit court's legal conclusions." *Patton v. Wells Fargo Fin. Md., Inc.*, 437 Md. 83, 95 (2014); *Margolis*, 221 Md. App. at 714.

We need not, however, adopt the same reasoning as the circuit court. "'[W]here the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, an appellate court will affirm.'" *Gooch v. Maryland Mech. Sys., Inc.*, 81 Md. App. 376, 382 (1990) (quoting *Robeson v. State,* 285 Md. 498, 502 (1979), *cert. denied*, 444 U.S. 1021 (1980)). In essence, "the trial court's decision may be correct

although for a different reason than relied on by that court." *Gooch*, 81 Md. App. at 382 (citation and quotation marks omitted).

B. Public Official Immunity

Public official immunity is a common-law doctrine that limits certain officials' liability for official acts. An official must satisfy three conditions to qualify for the immunity: "(1) he or she must be a *public official;* and (2) his or her tortious conduct must have occurred while performing *discretionary* acts in furtherance of official duties; and (3) the acts must be done without malice." *Williams v. Mayor & City Council of Baltimore*, 359 Md. 101, 140-41 (2000) (emphases in original). The Court of Appeals has recently modified the third condition to require the public official to show that he or she did not act either with malice or gross negligence. *Cooper v. Rodriguez*, 443 Md. 680, 723 (2015) ("gross negligence is an exception to common law public official immunity").

In this case, it is plain from the face of the amended complaint that the officers met all three conditions of public official immunity.

First, the police officers in this case clearly were "public official[s] acting within the scope of" their official duties. *Ashburn*, 306 Md. at 622. The officers were also acting within their official function, namely their "community caretaking" function, a role that "permit[s] police to investigate or aid citizens who may need assistance or are in danger." *Wilson v. State*, 409 Md. 415, 437 (2009).

Second, the officers clearly performed discretionary acts in allegedly "ordering" Ms. Freedman to jump. "'[D]iscretion is the power conferred upon [the officers] by law to act officially under certain circumstances according to the dictates of their own judgment and conscience and uncontrolled by the judgment or conscience of others.'" *Cooper*, 443 Md. at 713 (quoting *Livesay v. Balt. Cnty.*, 384 Md. 1, 16 (2004)). Attempting to help Ms. Freedman rescue herself from a burning building is clearly a task left to the "dictates of the [officers'] own judgment and conscience." *Id.* Thus, the only issue remaining is whether Ms. Freedman adequately alleged that the officers acted with malice or were grossly negligent.

Even drawing all reasonable inferences in Ms. Freedman's favor, we are unable to infer malice or gross negligence from the officers' conduct. Malice is a nebulous term, but it implies, at the least, an "improper motive." *See, e.g.*, *DiPino v. Davis*, 354 Md. 18, 55 (1999) (discussing malice in the context of malicious prosecution). We do not see any indications of an improper motive. Furthermore, malice is more indicative of an intentional tort, not a negligent one, and Ms. Freedman has alleged no intentional torts. We cannot find malice in the complaint.

"Gross negligence has been defined as, among things, 'an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them.'" *Cooper*, 443 Md. at 686 (quoting *Barbre v. Pope,* 402 Md. 157, 187 (2007)). We do not see how a jury could take the facts in Ms.

Freedman's complaint, even assuming, as we must, that they are entirely true, and conclude that the officers had a "thoughtless disregard of the consequences." Indeed, in view of Ms. Freedman's allegations about threat of smoke and fire that had put her into a "state of shock," one might ask whether the officers would have been guilty of a "thoughtless disregard of the consequences" had they *not* told her to jump.

When the officers allegedly "ordered" her to jump, Ms. Freedman was in a burning building, was screaming in fear for help, and was only on the third floor. Ms. Freedman does not allege that because of the height of her third-floor window, the fall was obviously deadly. She survived her fall and, as far as we can tell, was not injured by the smoke that was entering her apartment or by the fire that she feared was entering the apartment. Even if hindsight were the guide, the alleged proximity of the firefighting team would not transform Ms. Freedman's tenuous allegations of negligence into allegations of gross negligence.

In short, even taking Ms. Freedman's claims that the officers were negligent at face value, the complaint does not allege or suggest that the officers were grossly negligent, as required to defeat public official immunity. We do not see "intentional failure," "a manifest duty," or a "reckless disregard of the consequences." *Cooper*, 443 Md. at 686 (quoting *Barbre,* 402 Md. at 187). Even if, as alleged in the complaint, the officers negligently evaluated the situation, negligently "ordered" Ms. Freedman to jump, and negligently stood by while she plummeted to her (survivable) injuries, we cannot see how their actions could possibly reach gross negligence.

CONCLUSION

Because the officers enjoy public official immunity, we do not reach the other questions presented in this appeal. We affirm the circuit court's dismissal of the claims against Officers Wright and Langan.

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