UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0152

September Term, 2015

DARRIUS STEWART

v.

JAMES WEBB, et al.

Graeff,
Friedman,
Moylan, Charles A., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 8, 2016

The single question presented by this case is: how little may a plaintiff allege in a motion to defer dismissal under Rule 2-507(e) and still get a hearing under Rule 2-311(f)? Under the facts of this case, we conclude that plaintiff's motion was woefully short on information but not so inadequate as to fail to trigger the hearing requirement. Thus, we will remand for a hearing. We caution the plaintiff, however, that at the hearing he must be prepared to provide more detailed information (1) about his claim to be ready, willing and able to proceed; and (2) his justification for the delay. We also caution those who represent plaintiffs that the Rule 2-507 process does not function to serve as their office's "tickler file" system.[1]

FACTUAL AND PROCEDURAL HISTORY

Darrius Stewart filed a civil complaint in the Circuit Court for Baltimore City on October 3, 2012, in which he alleged that he had been injured by lead paint poisoning while living in a property owned by the defendants. For a year, nothing was placed in the court file until, on December 30, 2014, the Clerk of the Circuit Court issued a "Notification of Contemplated Dismissal" pursuant to Rule 2-507(d). Stewart responded by filing a "Motion to Suspend Rule 2-507" on January 13, 2015. That boilerplate motion recites, in pertinent part, that:

> Here, similar to the plaintiff in *Powell* [*v. Gutierrez*, 310 Md. 302, 308 (1987)], Plaintiff "promptly filed a motion to defer

[1] For an explanation of a "tickler file," see https://en.wikipedia.org/wiki/Tickler_file (last visited Feb. 18, 2016), also available at https://perma.cc/7GQH-PPVQ (link captured Feb. 18, 2016).

> dismissal" within thirty days of the Notification of Contemplated Dismissal. *Powell*, 310 Md. at 309. Further, as the docket illustrates, Plaintiff has made efforts to serve Defendants, has continued investigation of the claims alleged in the Complaint, is actively pursuing this litigation in good faith, and is "ready and eager to prosecute [this] action." *Id*. at 308. Given these facts, good cause exists to defer dismissal and this case is not "obvious dead wood" which warrants dismissal under the stringent threshold of Md. Rule 2-507(e). *Ewachiw* [*v. Director of Finance*], 70 Md. App. [58,] 71 [(1987)].

Filed contemporaneously, but in a separate document, in satisfaction of the requirements of Rule 2-311(f), was a document captioned "Request for Hearing." Despite Stewart's request, the circuit court did not hold a hearing, and by Order dated March 16, 2015, dismissed the complaint. Stewart avers that he cannot now refile because he is "over the age of 21" (which we understand to mean that refiling would be precluded by the operation of the statute of limitations). Stewart has noted a timely appeal to this Court. Defendants have declined to file a brief in opposition.

ANALYSIS

Stewart's analysis proceeds as follows: in response to the notification of pending dismissal, he filed the requisite motion to avoid dismissal and requested a hearing. Having done so, his case cannot, pursuant to Rule 2-311(f), be dismissed without a hearing. Because he was not given a hearing, he argues, remand to the circuit court for that hearing is required.

Upon receiving the clerk's notification of contemplated dismissal, a plaintiff has 30 days to file a motion to defer entry of the dismissal. Rule 2-507(e). In that motion, the

plaintiff is required to show "good cause." *Id*. The Court of Appeals has given a specialized definition to the term "good cause" as it appears in this Rule, specifically rejecting a focus on plaintiff's diligence and instead focusing on continued interest in resolution. *Powell v. Gutierrez*, 310 Md. 302 (1987). As Judge Harry A. Cole said for the Court of Appeals in *Powell*: "To show 'good cause,' the party filing the motion to defer dismissal must demonstrate to the court that he is ready, willing, and able to proceed with the prosecution of his claim and that the delay in prosecution is not wholly without justification." *Id*. at 308; *see also Spencer v. Estate of Newton*, __ Md. App. __, __ No. 364, September Term 2015, slip op. at 6 (filed February 25, 2016) (stating that "there are several factors that a court must consider, weigh, and balance[,]" including two that pertain to the plaintiff's status and conduct: (1) that he is ready, willing and able to proceed; and (2) justification for delay).

Rule 2-507(e) must be read in conjunction with Rule 2-311(f), which provides that:

> A party desiring a hearing on a motion, other than [a post-trial motion…, shall request the hearing in the motion … under the heading "Request for Hearing." The title of the motion … shall state that a hearing is requested. Except when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim … without a hearing if one was requested as provided in this section.

The unmistakable import of this Rule is that if a hearing on a motion is requested, a case cannot be dismissed without one.

Had Stewart failed entirely to file a motion to defer dismissal pursuant to Rule 2-507(e), he would not be entitled to a hearing before dismissal. The motion he filed is so thin, so bare-bones, and so lacking in detail, as to be nearly the equivalent of no motion at all. It tells the circuit court nothing. It merely recites that the plaintiff is "ready, willing and able to proceed," but does nothing to "demonstrate" that readiness, willingness, and ability. Similarly, although Stewart avers that he has "made efforts to serve Defendants," and that he has "continued investigation of the claims," he has provided no details to show that the delay is not "wholly without justification." *Powell*, 310 Md. at 308. Although we think this is perilously close to no motion at all, we hold that it was sufficient—barely—to trigger the hearing requirement and that the circuit court erred in dismissing the matter without one. We hope that this Opinion is not read as condoning motions like Stewart's, but as encouraging counsel toward more complete statements explaining the existence of good cause.

At oral argument, Stewart's counsel told this Court that other members of the bar —but not him—use Rule 2-507 as a "tickler" system, whereby the clerk of the court effectively provides counsel with a reminder to keep working on a given case. Suffice to say, we are not impressed. The purpose of the Rule is to avoid backlogs and to keep dockets moving along, not to provide an automatic means for awakening counsel from an 11-month slumber. Cases must be pursued diligently. This practice, if it exists, must stop.

Our determination that Stewart's motion was sufficient to trigger the hearing requirement contains within it no guarantees about the outcome of that hearing. In our

view, it will not be enough if Stewart merely recites by rote, as he did in his motion, the formulation from *Powell* that he still wishes to have his dispute resolved. Rather, he must provide more concrete information and specific examples of his conduct and that of his counsel to demonstrate (1) that they have acted in a manner that is consistent with wanting to have the case resolved; and (2) that the delay so far is not "wholly without justification." If they can do so to the circuit court's satisfaction, the case can proceed. If not, the case will appropriately be dismissed.

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