UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0334

September Term, 2015

MAHMOOD KHAN

v.

SOUTHEASTERN HOLDINGS, LTD

Kehoe,
Leahy,
Davis, Arrie W.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 15, 2016

Appellant Mahmood S. Khan brought the underlying complaint on a contract for the sale of land against Appellee Southeastern Holdings, Ltd. ("Southeastern Holdings"),[1] in the Circuit Court for Baltimore County on September 17, 2012. Mr. Khan later sought to join Bonnie and Richard Dixon—who he alleges are the agents and sole owners of Southeastern Holdings—as parties in the case by filing a second amended complaint just two days prior to the joinder deadline contained in the scheduling order. However, the circuit court did not issue writs of summons for the Dixons until nearly two months later. Mr. Dixon moved to quash his service of process, and the circuit court granted the motion, quashing service "on Richard Dixon that would allow him to be a named defendant in violation of the scheduling order." Mr. Khan's motion to reconsider this determination was denied, and the case proceeded against Southeastern Holdings.

On March 24, 2015, the circuit court entered partial summary judgment in Mr. Khan's favor against Southeastern Holdings in the amount of $275,188.59, and the docket reflected on that day that "Richard Dixon and Bonnie Dixon [] are dismissed for lack of service." Mr. Khan timely appealed the case to this Court with one question, which we have slightly rephrased:

> Did the circuit court err when it quashed the summons and later dismissed the individual claims against Richard & Bonnie Nixon for the reason that they were timely added as parties, but not yet served, prior to the deadline for joinder of parties under the court's scheduling order?

[1] Southeastern Holdings did not file a brief in this Court.

We reverse the order granting the motion to quash service and the order denying Mr. Khan's motion for reconsideration of that order, vacate the dismissal of Richard and Bonnie Dixon for lack of service, and remand the case for further proceeding consistent with this opinion.

BACKGROUND

Contract Negotiations

Beginning in September 2011, the parties entered into negotiations over the sale of a residence located at 10518 Marriottsville Road, Randallstown, Maryland (the "Property"). The record shows the Property was owned at the time by Appellee Southeastern Holdings, Ltd., a Delaware corporation, and that Bonnie and Richard Dixon were listed as the registered agents of the corporation.[2] Mr. Khan alleges that, during the negotiations, Mr. and Mrs. Dixon represented that they had ample experience in rehabilitating and selling real estate and that they had expended $275,000.00 rehabilitating the Property. The parties entered into a contract for sale (the "First Contract") on August 2, 2011. The First Contract established a purchase price of $600,000.00, required an initial payment of $5,000.00, and required that Mr. Khan apply for financing of the property within three days of signing the First Contract. The First Contract also required that Mr. Khan provide a preliminary loan approval to Southeastern Holdings within 10 days and provided that Southeastern Holdings could rescind the First Contract if Mr. Khan

[2] According to Mr. Khan, Mr. and Mrs. Dixon are the sole owners of Southeastern Holdings, Ltd.

did not secure financing within 25 days. The parties ultimately cancelled the First Contract.[3]

On August 22, 2011, the parties entered into another "Residential Contract of Sale" (the "Second Contract") for the Property, which established a purchase price of $600,000.00 and required an initial down payment of $20,000.00 cash, as well as a second down payment of $8,307.36 via check. Under the Second Contract, Southeastern Holdings agreed to carry a first mortgage/trust deed in the amount of $580,000.00 (the remainder of the purchase price), and Mr. Khan was to pay principal and 4 percent interest in quarterly payments of $8,307.36, amortized over 30 years. An addendum to the Second Contract, also signed on August 22, 2011, required that Mr. Khan "agree[] to provide complete and truthful documentation of [his] qualifications that [Southeastern Holdings] requests within 10 days after acceptance of the contract." The addendum also stated that, "[a]s an inducement for [Southeastern Holdings] accepting the contract and allowing [Mr. Khan] to have such a small down payment[, Mr. Khan] agrees that any deposit(s) given prior to closing shall be non-refundable."

That same day, Mr. Khan paid his initial $20,000.00 cash down payment, and three days later, he paid $8,307.03 via a check. However, on October 11, 2011, Southeastern Holdings sent Mr. Khan a letter purporting to terminate the contract. The letter accused

[3] The reasons for the cancellation of the First Contract are unclear. However, the record demonstrates that, before signing the First Contract, Mr. Khan had secured pre-approval of a loan for only $417,000.00, and an email from Mr. Khan's lender suggests that Mr. Khan ultimately did not qualify for the higher-value loan because the lender believed that his debt-to-income ratio was too high.

Mr. Khan of conspiring "to commit mortgage fraud" by submitting a "fraudulent pre-approval letter; mortgage applications and several other fraudulent financial and tax forms" and further stated that Mr. Khan "lied to [Southeastern Holdings] from the beginning[.]"

Notwithstanding Southeastern Holdings' accusations, on October 22, 2011, the parties executed a third document, entitled "Maryland Standard Option Contract or Contract for Deed" (the Third Contract").[4] The Third Contract increased the purchase price to $675,000.00, required a $40,000.00 down payment, required Mr. Khan to make monthly payments in the amount of $5,000.00 beginning on February 1, 2012 and ending on November 1, 2012, and "credited" a $4,000.00 monthly payment "towards [the] down payment."[5] As per the Third Contract, "[u]pon full payment of the full purchase price, this transaction shall close and Seller shall provide the deed conveying title to the property[.]" The Third Contract provided that the transaction should close on December 1, 2012, but also provided for an extension until November 1, 2013 if "Buyer is unable to qualify for the mortgage/loan . . . through no negligence of the Buyer[.]" According to the Third Contract, Southeastern Holdings would deliver the property "as is," and Mr. Khan

[4] Mr. Khan refers to the Third Contract as a "Land Installment Contract" in his complaint and amendments thereto. Southeastern Holdings filed an answer to the second amended complaint, denying that the Third Contract was a land installment contract, and referred to the document instead as the "Rental Agreement."

[5] Per this Court's calculations, the Third Contract's required payments fall significantly below the $675,000.00 purchase price. Neither the parties nor the record before us explains this discrepancy. Because we are not asked here to interpret the Third Contract, we include this information only in an effort to include the case's factual development.

"agree[d] that all plumbing, electrical and HVAC systems are in good working order and that there are no defects in the property." On October 24, 2011, Mr. Khan paid Southeastern Holdings $20,000.00 via check.

An August 6, 2012 appraisal of the Property requested by Mr. Khan valued it at $470,319.00. The appraisal noted that "THERE ARE NO APPARENT FUNCTIONAL OR EXTERNAL INADEQUACIES. THE OVERALL QUALITY OF THE IMPROVEMENTS ARE AVERAGE. THE SUBJECT PROPERTY APPEARS TO BE WELL MAINTAINED AND IN AVERAGE TO GOOD CONDITION AT THE TIME OF INSPECTION."

The Khan Complaints

On September 17, 2012, Mr. Khan filed both a complaint and a separate motion for summary judgment against Southeastern Holdings in the Circuit Court for Baltimore County. The complaint alleged that the Third Contract "meets the definition of a land installment contract[,]" as defined in Maryland Code (1974, 2015 Repl. Vol.), Real Property Article ("RP"), § 10-101(c). The complaint further averred that, because the Third Contract meets RP § 10-101(c)'s definition of a land installment contract, Southeastern Holdings was required to record the contract in the land records of Baltimore County within 15 days of signing. Because Southeastern Holdings failed to do so, Mr. Khan argued that RP § 10-102(f) gave him the "unconditional right to cancel the contract and to receive immediate refund of all payments and deposits made on account of or in contemplation of the contract[.]" The complaint further alleged that Mr. Khan notified

Southeastern Holdings of his intention to cancel the Third Contract on July 14, 2012, but that Southeastern Holdings had "failed or refused to refund" the sum of $88,188.59 that he had paid thus far.[6] The complaint requested that the circuit court grant Mr. Khan a judgment for $88,188.59 and any "such other and further relief as the nature of the cause may require."

On October 23, 2012, Southeastern Holdings opposed the motion for summary judgment, arguing that the Third Contract was not a land installment contract within the purview of RP § 10-102(f) and that Mr. Khan was not entitled to a return of the $88,188.59 sum because the Third Contract created a lease on the Property until closing and, by refusing to close on the purchase of the Property, Mr. Khan had defaulted on the Third Contract and was not entitled to that sum. That same day, Southeastern Holdings brought a counterclaim—for unpaid rent and damages to the Property—against Mr. Khan.

On November 8, 2012, the circuit court issued a scheduling order for the case. The scheduling order referred the case to civil mediation and, *inter alia*, established a February 13, 2013 deadline for the joinder of any additional parties to the case and provided that all unserved defendants would be dismissed by March 8, 2013. The scheduling order also

[6] The $88,188.59 sum includes: (1) the $20,000 cash payment from August 22, 2011; (2) the $8,307.36 check payment from August 25, 2011; (3) the $20,000.00 check payment from October 24, 2011; (4) a $1,583.44 electronic check payment from November 7, 2011 to Allstate Insurance; (4) three $5,000.00 check payments dated February 1, 2012, February 29, 2012, and April 2, 2012 to Punger Assets, LLC; (5) an April 19, 2012 $7,456.86 online payment to Baltimore County for Real Property Tax, interests, and fees; (6) two additional $5,000.00 checks to Punger Assets, LLC dated April 30, 2012 and May 31, 2012; and (7) a final $5,841.26 check payment to Punger Assets, LLC dated June 30, 2012. Neither the record nor the parties explain all of these payments.

established that the circuit court would not approve any postponements, except for hardship or emergency situations. The circuit court denied Mr. Khan's motion for summary judgment on November 13, 2012, finding that "there is a sufficient dispute of material fact to the effect that the motion for summary judgment should not be granted[.]" The circuit court also struck Southeastern Holdings' counterclaim, noting that "[n]o Maryland Rule allows the combination of a paper with a pleading."

On November 9, 2012, Mr. Khan filed an amended complaint ("First Amended Complaint") against Southeastern Holdings, again alleging that, despite its failure to comply with RP § 10-102(f), Southeastern Holdings did not cancel the Third Contract and refused to refund the $88,188.59 sum that Mr. Khan had paid in contemplation of the Third Contract. The First Amended Complaint added a second count of intentional misrepresentation against Southeastern Holdings and alleged that Southeastern Holdings intentionally made the following false statements during the negotiations for the purchase contracts: (1) that it had "legally and properly rehabilitated the Property at a cost of $275,000"; (2) "that the appraised value of the house was $799,000.00"; and (3) that, under law, Mr. Khan "could only purchase the property . . . if he also signed a rental agreement[.]"

On February 11, 2013—two days *before* the joinder deadline in the scheduling order—Mr. Khan, through new counsel, filed a second amended complaint ("Second Amended Complaint") against Southeastern Holdings and joined Mr. and Mrs. Dixon as defendants. The Second Amended Complaint maintained the same failure to comply with RP § 10-102(f) and intentional misrepresentation allegations against Southeastern

Holdings,[7] but also added a third count, titled "deceit," against Mr. and Mrs. Dixon. The Second Amended Complaint requested cancellation of the Third Contract, compensatory damages for payments that Mr. Khan paid to Southeastern Holdings, and $500,000.00 in punitive damages.[8]

Failure to Issue Summons

Although the Second Amended Complaint added a count against Mr. and Mrs. Dixon, the circuit court did not issue a summons for them, and there nothing in the record that demonstrates that counsel affirmatively requested issuance of a summons. On March 29, 2015—more than a month after the case's joinder deadline—Mr. Khan's counsel filed a line requesting that the circuit court issue summons for Mr. and Mrs. Dixon.[9]

[7] The Second Amended Complaint omits the First Amended Complaint's allegation that Mr. Khan was told that he "could only purchase the property . . . if he also signed a rental agreement[.]"

[8] We note that the scheduling order did not provide a deadline for the amendment of pleadings. The scheduling order also did not set a trial date, and instead, set a disposition deadline of March 16, 2014, before which the trial must be scheduled. We also note that the record does not contain any copy of an answer to the second amended complaint, nor does the docket reflect that one was ever filed.

[9] Docket entries by the circuit court refer to this request as a "Summons Request to Reissue." However, Mr. Khan's counsel requested issue, not *reissue*, of Mr. and Mrs. Dixon's summons, and no docket entries indicate that the circuit court issued a writ of summons for Mr. and Mrs. Dixon prior to this request. The only prior writ of summons noted in the docket entries is dated September 20, 2012 and was issued only as to Southeastern Holdings. Notably, Southeastern Holdings' writ of summons was reissued on May 5, 2013, but rescinded with a note indicating error. This entry suggests that the clerk's office originally believed that Mr. Khan asked the court to reissue the summons for Southeastern Holdings, instead of issuing the summons for Mr. and Mrs. Dixon, which may explain the discrepancy between the entered line and the corresponding docket entry.

The circuit court issued the requested summons on April 5, 2013—almost two months after Mr. Khan filed his Second Amended Complaint naming the Dixons as defendants. On April 18, 2013—13 days after the circuit court first issued the writs of summons—Mr. Khan served Mr. Dixon with his writ of summons and corresponding complaint during a court-ordered mediation session. Mrs. Dixon was not present at the mediation session. As a result, Mr. Khan enlisted a process server to serve Mrs. Dixon's writ of summons. However, the writ was ultimately returned as *non est*.

On April 22, 2013, Mr. Dixon filed a motion to quash service of process, based on the February 13, 2013 joinder deadline and the fact that the scheduling order established that all unserved defendants would be dismissed by March 8, 2013. The motion to quash further alleged that "[s]ervice on Mr. Dixon at this time does not allow for Mr. Dixon to perform discovery or prepare for trial" and that "[a]dding Mr. Dixon to this case at this time is with extreme prejudice to his ability to prepare for trial."

On May 2, 2013, Mr. Khan opposed the motion, noting that Mr. and Mrs. Dixon "were properly added on February 11, 2013 prior to the Joinder of Additional Parties Deadline," and that the "Clerk's office did not issue summons for the new parties until April 4, 2013." In response to Mr. Dixon's prejudice argument, Mr. Khan highlighted that "Mr. Dixon along with his wife are sole owners of . . . Southeastern Holdings, Ltd." and that "the Second Amended Complaint was served on Defendants' counsel immediately after filing." Mr. Khan called the motion to quash "yet another obstructionist attempt by the Defendants to avoid any meaningful participation in this matter[.]"

On June 17, 2013, the circuit court granted Mr. Dixon's motion to quash and struck his service as being "in violation of the scheduling order." The Court added, "[w]hile it would have been better and more in accord with the process provided for by the Rules for the motion to have been to strike the amended complaint, the effect is the same."

On July 22, 2013, Mr. Khan filed a motion for reconsideration, asking that the circuit court reconsider its order granting Mr. Dixon's motion to quash, noting that he was properly added prior to the February 13, 2013 joinder deadline, that he was promptly served soon after the court issued its April 4, 2013 writ of summons, and that the "Court's Order . . . striking service on [Mr. Dixon] does not state with particularity the grounds for finding in what way [Mr. Khan's] addition of the Dixons . . . 'was in violation of the scheduling order.'" Mr. Dixon opposed the motion for reconsideration on July 30, 2013, alleging that Mr. Khan "made no effort to serve Richard Dixon or Bonnie Dixon" and arguing that "[a]dding Mr. Dixon and Mrs. Dixon at this time does not allow for either defendant to perform discovery or prepare for trial." On August 14, 2013, the circuit court denied Mr. Khan's motion for reconsideration, stating:

> What the Movant argues is a distinction without a difference. What the focus of attention should be on is the fact that this case has been outstanding for a long period of time; it is a mystery why the Plaintiff did not make timely steps to serve the Dixons; and now it would be unfair and unduly prejudicial to say the Dixons are or should be targets as Defendants without the benefit of discovery, etc. pursuant to a scheduling order that has expired and will offer them no protection.

Following the denial of reconsideration, the case continued, and the circuit court held a trial on March 24, 2015.[10] That same day, the circuit court entered a default judgment in Mr. Khan's favor against Southeastern Holdings in the amount of $275,188.59, along with costs and post-judgment interest.[11] This $275,188.59 judgment was comprised of $75,188.59 in compensatory damages, as well as $200,000.00 in punitive damages. The docket also noted a dismissal of Mr. and Mrs. Dixon from the case for lack of service on that day. On April, 21, 2015, Mr. Khan timely appealed noted his appeal to this Court.

DISCUSSION

Mr. Khan argues that the circuit court erred by dismissing his claims against Mr. and Mrs. Dixon for lack of service because they were timely added according to the scheduling order and the circuit court failed to issue the summons until two months after the Dixons were added as parties. Mr. Khan explains that, although the circuit court entered a judgment in his favor, Southeastern Holdings, which is "is a mere shell without assets and there is no remedy to recover the . . . losses without the individual defendants being part of the litigation."

[10] Although the original motion to quash addressed only Mr. Dixon's service of process, the parties argued the propriety of serving both Mr. and Mrs. Dixon under the scheduling order in their memoranda, and the court's ruling on August 14th made it clear that it applied to both Mr. and Mrs. Dixon.

[11] On December 22, 2014, the circuit court granted Southeastern Holding's counsel's motion to withdraw as counsel. Southeastern Holding's counsel's motion indicates that he had not been in contact with Mr. and Mrs. Dixon since September 29, 2014 and that he was unsure of their whereabouts.

Maryland Rule 2-504(a) requires that a circuit court "enter a scheduling order in every civil action[.]" The Court of Appeals has explained that "[t]he principal function of a scheduling order is to move the case efficiently through the litigation process by setting specific dates or time limits for anticipated litigation events to occur." *Dorsey v. Nold*, 362 Md. 241, 255 (2001) (citing *Tobin v. Marriott Hotels, Inc.*, 111 Md. App. 566, 572-73 (1996)). "[A]bsolute compliance with scheduling orders is not always feasible[.]" *Naughton v. Bankier*, 114 Md. App. 641, 653 (1997) (citing *Betz v. State*, 99 Md. App. 60 (1994)). However, a trial court can reasonably "demand at least substantial compliance[.]" *Id*. (citation omitted); *see also Butler*, 435 Md. at 650-51 (citations omitted) ("a court must consider the parties' good faith compliance with the scheduling order").

On the one hand, we review a trial court's enforcement of a scheduling order for abuse of discretion. *See Butler v. S & S P'ship*, 435 Md. 635, 650 (2013) (citations omitted) (reviewing a trial exclusion of evidence pursuant to a scheduling order under the abuse of discretion standard); *Maddox v. Stone*, 174 Md. App. 489, 501 (2007) (reviewing a trial court's decision to exclude a key witness because of a failure to meet the deadlines in a scheduling order for abuse of discretion). However, while the abuse of discretion standard is highly deferential, "a trial judge's discretion is not boundless." *Butler*, 435 Md. at 650 (citing *Nelson v. State*, 315 Md. 62, 70 (1989)). Because dismissal of a claim due to failure to comply with a scheduling order "is among the gravest of sanctions," it is generally "warranted only in cases of egregious misconduct such as 'wil[l]ful or contemptuous' behavior, 'a deliberate attempt to hinder or prevent effective presentation of defenses or

counterclaims,' or 'stalling in revealing one's own weak claim or defense.'" *Manzano v. S. Maryland Hosp., Inc.*, 347 Md. 17, 29-30 (1997) (alteration in original) (quoting *Rubin v. Gray*, 35 Md. App. 399, 400–01 (1977)). As a result, "the imposition of such a draconian sanction must be supported by circumstances that warrant the exercise of the court's discretion in such a manner." *Maddox*, 174 Md. App. at 501 (citations omitted).

In *Butler v. S & S Partnership*, a lead-based paint case, the Court of Appeals analyzed whether the circuit court abused its discretion when it excluded a report because the plaintiff did not allow defendants the opportunity to attend the lead test, in violation of the scheduling order. 435 Md. at 649-53. "[C]ognizant of the fact that a lead test constitutes a crucial piece of evidence in a lead paint case, capable of making or breaking the plaintiff's case[,]" the Court concluded that the trial court abused its discretion in the case. *Id*. at 652-53. In its analysis, the Court noted that the report "was disclosed within the time limits for discovery and the failure to provide notice was a technical, rather than substantial, failure." *Id*. at 652. The Court added that, "although perhaps not ideal where the case had already been pending for approximately two years, any potential prejudice could have been cured by a postponement or other less drastic sanction." *Id*. Noting that case-ending sanctions are among the gravest of sanctions that a court can impose, it found that there was no "'egregious violation'" or "'opprobrious behavior'" that would warrant the "'draconian sanction'" of "'precluding the evidence necessary to support [Petitioner's] claim.'" *Id*. at 653 (alteration in *Butler*) (quoting *Admiral Mortgage, Inc. v. Cooper*, 357 Md. 533, 545 (2000)).

In *Maddox v. Stone*, this Court considered whether a trial court abused its discretion by excluding a material expert witness who failed to submit a written report until after the scheduling order's deadline for the parties to disclose discovery information. 174 Md. App. at 493-95. This Court recognized that the expert witnesses report was, in fact, delivered 34 days after the deadline established in the scheduling order. *Id*. at 501. However, it held that the circuit court abused its discretion because it "indicated an unwillingness to consider extending Stone's expert deadline or to consider reopening discovery, or even to consider the merits of appellants' claim of substantial compliance with the scheduling order." *Id*. at 505. In its decision, this Court noted that "appellants provided [Stone] with [the] expert['s] report as soon as they received it[.]" *Id*. at 506. In its conclusion, this Court observed:

> The rule requiring the entry of scheduling orders was intended to promote the efficient management of the trial court's docket, not to erect additional opportunities for a court to dismiss meritorious claims for lack of strict compliance with arbitrary deadlines. In the quest to achieve greater judicial efficiency through the use of case management techniques such as scheduling orders, the courts must not lose sight of their primary responsibility: to render justice and resolve disputes in a fair and just manner. *Scheduling orders are but the means to an end, not an end in and of themselves*.

Id. 506-07 (emphasis added).

In its relevant language, Maryland Rule 2-341 permits a party to amend a pleading to "add a party or parties" and requires that, "[i]f a new party is added by amendment, the amending party shall cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action,

to be served upon the new party." In Maryland, "[t]he general rule is that amendment should be allowed liberally." *McMahon v. Piazze*, 162 Md. App. 588, 599 (2005). The Court of Appeals has explained that the objective of Maryland's amendment and joinder rules "is to facilitate the attainment of a just, speedy and inexpensive determination of all disputes between the same parties." *Robertson v. Davis*, 271 Md. 708, 708 (1974) (citations omitted) (applying previous versions of the Maryland Rules).

In this case, the dismissal of the claims against Mr. and Mrs. Dixon had the effect of ending Mr. Khan's case as to them. Therefore, under *Maddox*, "the imposition of such a draconian sanction [should] be supported by circumstances that warrant the exercise of the court's discretion in such a manner." 174 Md. App. at 501 (citations omitted).

It appears that the circuit court's ruling was based on two deadlines contained in the scheduling order.[12] The first was the February 13, 2013 deadline for joinder of parties. Because Rule 2-341 allows the addition of parties by an amended pleading, we conclude that Mr. Khan properly joined Mr. and Mrs. Dixon through his Second Amended Complaint on February 11, 2013, two days *before* the joinder deadline in the court's scheduling order. Rule 2-341 does not require that the parties be served at the time they are added.

[12] The court also discussed the March 30, 2013 deadline for completion of discovery. We note, however, that because the settlement conference was not scheduled to occur until May 14, 2013, and the scheduling order did not set the trial date, the court could have accommodated a reasonable extension of the discovery deadline. *See Maddox*, 174 Md. App. at 505.

The second deadline in the scheduling order that the court appears to have relied upon was the March 8, 2013 deadline for "Dismissal Notice for unserved defendants (Md. Rule 2-507(B))." And, it appears that the court read that deadline to mean that all parties had to be served by that date. We read the Rule differently.

Rule 2-507(b) provides that "an action against any defendant who has not been served . . . is subject to dismissal as to that defendant at the expiration of 120 days from the issuance of original process directed to that defendant." In this case, it is true that Mr. Khan did not file his line requesting that the circuit court issue summonses for Mr. and Mrs. Dixon until March 29, 2015. Although it would have certainly advanced the process had Mr. Khan filed that line a few weeks earlier along with the second amended complaint, there was no obligation to do so. Under Maryland Rule 2-341, where a pleading is amended to "add a party or parties . . . the *amending party* shall cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action, to be served upon the new party." (Emphasis added). Therefore, although the Rules place the responsibility to issue writs of summons squarely on the clerk of the court at the time of filing the complaint,[13] a party who amends the

[13] *See* CJP § 2-201(a) ("The clerk of a court shall . . . [i]ssue all writs which may legally be issued from the court[.]"); Md. Rule 2-112(a) ("[u]pon the filing of the complaint, the clerk shall issue *forthwith* a summons for each defendant and shall deliver it . . . to the sheriff or other person designated by the plaintiff. . ") (emphasis added). *See also Dir. of Fin. of Baltimore City v. Harris*, 90 Md. App. 506, 513 (1992) (explaining that a clerk of the court "must accept and file" any "properly presented" paper so long as that paper does not lack "an admission or waiver of service or a certificate showing the date and manner of service.").

complaint to add another party shares the responsibility for ensuring that the clerk issues a summons for the added party. Here, Mr. Khan filed the amended complaint prior to the joinder deadline, and then, after realizing that the clerk had not issued summonses, took steps to ensure that the clerk issued the proper summonses within a reasonable time thereafter. Once the circuit court issued Mr. and Mrs. Dixon's writs of summons April 5, 2013, Mr. Khan served Mr. Dixon a mere 13 days later, taking considerably less time than the 60 days provided to him by Rule 2-113,[14] and, consequently, could not have triggered the 120-day deadline under Rule 2-507(b).

In its order denying Mr. Khan's motion for reconsideration, the circuit court states that "it is a mystery as to why [Mr. Khan] did not take timely steps to serve the Dixons." But the proper inquiry in this case should have been into the date on which the Dixons were joined as parties, not when they were served. The record established that Mr. Khan complied with the scheduling order by amending the complaint to join Mr. and Mrs. Dixon on February 11, 2013—two days before the joinder deadline in the scheduling order.

Applying the *Butler* and *Maddox* principles to this case—under which trial courts should cure violations of a scheduling order through means that best serve justice and reserve case-ending sanctions only for the most reproachful conduct—we conclude that the circuit court abused its discretion when it found that Mr. Khan did not take timely steps to

[14] Rule 2-113 provides that "[a] summons is effective for service . . . if served within 60 days after the date it is issued." We conclude that the writ of summons was not dormant when Mr. Khan served Mr. Dixon during the April 18, 2013 court-ordered mediation session, 13 days after the circuit court first issued the writs of summons.

serve the Dixons and dismissed Mr. and Mrs. Dixon from the case for lack of service. *See* *Conwell Law LLC*, 221 Md. App. at 499.

ORDER GRANTING MOTION TO QUASH SERVICE TO RICHARD DIXON REVERSED. ORDER DENYING APPELLANT'S MOTION FOR RECONSIDERATION OF ORDER GRANTING DEFENDANT'S MOTION TO QUASH REVERSED. DISMISSAL OF RICHARD DIXON AND BONNIE DIXON FOR LACK OF SERVICE VACATED.

CASE REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY APPELLEE.