

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0398

September Term, 2015

ANNETTE DAVIS

v.

STATE FARM INSURANCE
COMPANY, *et al.*

Woodward,
Friedman,
Zarnoch, Robert A.
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: June 8, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

We are asked to determine whether the Circuit Court for Baltimore City (Geller, J.) erred in dismissing appellant Annette Davis’s case as a sanction for discovery violations and when it struck her previously noted appeals.

BACKGROUND

Davis was involved in an automobile accident with two other vehicles. Following the crash, Davis, acting as a self-represented litigant, filed a complaint in the circuit court against appellees (collectively, the “Defendants”), who are: Tabatha Brooks and Steven Gachery, the drivers of the other vehicles involved in the accident; John Arrington, the owner of the vehicle that Brooks was driving; Officer Kevin White, the police officer who investigated the accident; State Farm Mutual Automobile Insurance Company (“State Farm”), the automobile insurance carrier that provided coverage for Arrington’s vehicle; and Yulanda Hughes and Michael Gilfillan, the State Farm claim representatives assigned to the case.

After filing her complaint, Davis filed a Motion for Default Judgment. The circuit court (White, J.) denied the motion. Davis then filed a Motion for Reconsideration of the denial of her Motion for Default Judgment, which Judge White denied. Davis filed a second Motion for Reconsideration, which Judge White also denied. Davis then noted an appeal from Judge White’s denial of her Second Motion for Reconsideration (the “First Appeal”). Defendant Gachney filed a Motion to Strike Davis’s Notice of Appeal, arguing that Davis was appealing from an interlocutory order. The circuit court (Panos, J.) agreed and struck

Davis's First Appeal. Davis then noted an appeal from Judge Panos's Order striking her First Appeal (the "Second Appeal").

Meanwhile, the Defendants served written discovery on Davis and attempted to depose her. Davis repeatedly failed to comply with discovery and, in response to Defendants' notice of deposition, filed a pleading captioned "Motion to Dismiss the Defendants' Request for Deposition." Davis then failed to appear for her scheduled deposition. In response, the Defendants filed a Motion to Compel Discovery. The circuit court (Fletcher-Hill, J.) denied Davis's Motion to Dismiss the Request for Deposition, granted the Defendants' Motion to Compel, and advised Davis that her failure to participate in discovery could lead to the dismissal of her case. Judge Fletcher-Hill's Order specifically warned:

Plaintiff Davis has not stated any legitimate reason to be relieved of her obligation to respond to the interrogatories and to appear for deposition. The Court at this time declines to impose sanctions, but the Court will consider sanctions, including possible dismissal of Plaintiff Davis's claims, if Plaintiff does not comply with this Order.

Davis defied Judge Fletcher-Hill's Order and continued to refuse to be deposed. The Defendants filed a Motion for Sanctions Seeking Dismissal, citing Davis's failure to produce documents and her refusal to be deposed. At a hearing on that Motion, Judge Fletcher-Hill again declined to dismiss the case, but again ordered Davis to participate in discovery. Judge Fletcher-Hill's Order stated that he was providing Davis "a final

opportunity to comply with her discovery obligations.” Davis noted an appeal from Judge Fletcher-Hill’s Order (the “Third Appeal”).

Despite the warnings, Davis failed to attend her scheduled deposition or answer interrogatories. The Defendants filed a second Motion for Sanctions Seeking Dismissal, citing Davis’s refusal to attend the scheduled deposition. The Defendants’ Motion included, as an exhibit, a letter from Davis saying that she would not attend the deposition because, in her view, her Third Appeal was pending before this Court. Davis filed an opposition to the Motion for Sanctions. At a hearing, the circuit court (Geller, J.) dismissed Davis’s case, citing her repeated discovery failures. Judge Geller also struck Davis’s Second and Third Appeals. Davis noted an appeal from Judge Geller’s decision (the “Fourth Appeal”)—the appeal currently before this Court.

DISCUSSION

Davis alleges multiple errors and “miscarriages of justice.” We confine our review to only Judge Geller’s decisions: (1) to dismiss Davis’s case as a discovery sanction; and (2) to strike Davis’s Second and Third Appeals. *First*, we determine that the circuit court did not abuse its discretion in dismissing Davis’s case as a sanction for her repeated discovery violations. *Second*, we determine that the circuit court did not err in striking Davis’s Second and Third Appeals because neither was an appeal from a final judgment. We explain.

I. Dismissal as a Discovery Sanction

Davis contends that the circuit court erred in dismissing her case as a discovery sanction.

“[A] trial court has broad discretion to fashion a remedy based on a party’s failure to abide by the rules of discovery.” *Warehime v. Dell*, 124 Md. App. 31, 43 (1998) (internal citations omitted). Maryland Rule 2-433 provides that a court may dismiss an action for discovery violations:

(a) Upon a motion filed under Rule 2-432(a), the court, if it finds a failure of discovery, may enter such orders in regard to the failure as are just, including one or more of the following:

* * *

(3) An order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or **dismissing the action or any part thereof**, or entering a judgment by default that includes a determination as to liability and all relief sought by the moving party against the failing party if the court is satisfied that it has personal jurisdiction over that party.

Md. Rule 2-433 (emphasis added). We “are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery.” *Warehime*, 124 Md. App. at 44. Consequently, “we may not reverse unless we find an abuse of discretion.” *Id.*

Here, we determine that the circuit court did not abuse its discretion in dismissing Davis’s case as a discovery sanction. Judge Geller dismissed the case as a discovery sanction for Davis’s repeated failure to participate in discovery and to submit to a deposition. Davis had ample opportunity to do both. Instead, she continued to argue—

despite the circuit court’s clear explanations to the contrary—that she did not need to participate because of an incorrect, if good faith, belief that the appeals that she had noted stayed the circuit court’s proceedings. Davis refused to follow the circuit court’s Orders compelling her to participate in discovery and, after many chances, the circuit court dismissed her case. This was not an abuse of discretion.

II. Strike of Davis’s Earlier Appeals

Davis also contends that the circuit court erred in striking her Second and Third Appeals.

Appellate jurisdiction “except as constitutionally authorized, is determined entirely by statute, and ... , therefore, a right to appeal must be legislatively granted.” *Gisriel v. Ocean City Board of Supervisors of Elections*, 345 Md. 477, 485 (1977). Section 12-301 of the Courts and Judicial Proceedings Article (“CJP”) of the Maryland Code grants a right to appeal, with limited exceptions not relevant here, only in cases where the circuit court has entered a final judgment. CJP § 12-301 (“a party may appeal from a final judgment entered in a civil or criminal case by the circuit court”).

The Court of Appeals has explained how to analyze whether or not a judgment is final:

Determining whether a trial court’s ruling constitutes a final judgment requires an analysis of “three attributes”: (1) the court must intend it to be “an unqualified, final disposition of the matter in controversy;” (2) “it must adjudicate or complete the adjudication of all claims against all parties,” and (3) “the clerk must make a proper record of it” on the docket.

Baltimore Cnty. v. Baltimore Cnty. Fraternal Order of Police Lodge No. 4, 439 Md. 547, 563-64 (2014) (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)). A final judgment is an order “that has the effect of ‘put[ting] the [party] out of court.’” *Maintenance Systems South, Inc. v. Milburn*, 442 Md. 289, 299 (2015) (quoting *McCormick v. St. Francis de Sales Church*, 219 Md. 422, 426-27 (1959)). Conversely, Maryland Rule 2-602 explains that, “an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action, ... or that adjudicates less than an entire claim ... is not a final judgment.” Md. Rule 2-602.

The trial court did not err in striking Davis’s Second and Third Appeals because they were appeals from interlocutory orders and, therefore, were not appealable.¹ Davis filed four notices of appeal:

- (1) an appeal of Judge White’s Order denying her Second Motion for Reconsideration of Motion for Default Judgment;
- (2) an appeal of Judge Panos’ Order striking her First Appeal because Judge White’s Order was not a final judgment;

¹ Davis cites CJP § 12-304 for the idea that she can appeal an interlocutory order. CJP § 12-304, however, applies only to appeals of a court’s contempt findings. CJP § 12-304(a) states: “Any person may appeal from any order or judgment passed to preserve the power or vindicate the dignity of the court and adjudging him in contempt of court, including an interlocutory order, remedial in nature, adjudging any person in contempt, whether or not a party to the action.” CJP § 12-304. Because Davis is not appealing a contempt finding, CJP § 12-304 does not grant her a right to appeal.

- (3) an appeal of Judge Fletcher-Hill’s Order compelling Davis to appear for deposition;
- (4) an appeal of Judge Geller’s decision striking her Second and Third Appeals and dismissing the case for discovery violations.

Only the Fourth Appeal, which is the appeal currently before this Court, was an appeal from a final judgment. The other three were appeals from interlocutory Orders, which the court did not “intend to be ‘unqualified, final disposition[s] of the matter in controversy.’” *Baltimore Cnty Fraternal Order of Police Lodge No. 4*, 439 Md. at 563. Therefore, Davis did not have a right to appeal from those Orders, and this Court did not have appellate jurisdiction to review those Orders. *See Gisriel*, 345 Md. at 485; CJP § 12-301. Thus, the circuit court did not err in striking Davis’s Second and Third Appeals.

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