

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0513

September Term, 2015

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RUSSELL R. MIRABILE

v.

NANCY A. LEITER

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Eyler, Deborah S.,  
Arthur,  
Wilner, Alan M.  
(Retired, Specially Assigned),

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Opinion by Wilner, J.

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Filed: March 15, 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.

Appellant Mirabile and appellee Leiter are brother and sister who, in 1994, became equal partners in a mobile home park and allied businesses. Disagreements between them led to a contentious lawsuit filed in 2008 in the Circuit Court for Baltimore County. That lawsuit ultimately was resolved through a settlement agreement entered into on November 23, 2010 and a consent order dated December 1, 2010, both of which called for Mirabile to transfer the business and business property to Leiter in return for \$1,500,000 less certain setoffs.

The settlement agreement contained two provisions of particular relevance here – a general mutual release and a dissolution of the partnership. In paragraph 25 of the agreement, the parties irrevocably and unconditionally released and discharged each other from and against all debts, obligations, agreements, causes of action, and liabilities, asserted or unasserted, express or implied, foreseen or unforeseen, suspected or unsuspected, known or unknown, of any kind or nature. Paragraph 28 declared the partnership dissolved as of the date of the agreement.

The settlement agreement and consent order may have resolved that lawsuit, but they did little to resolve the disputes and acrimony between the parties. Numerous attempts were made by Mirabile to set aside the agreement and consent order, all of which were unsuccessful. In 2013, he was held in contempt for failure to comply with his obligations under the agreement. In July 2012, Mirabile filed a four-count complaint in the Circuit Court for Harford County against his sister, charging her with slander *per se* (Count I), slander (Count II), libel (Count III), and intentional infliction of emotional

distress (Count IV). In November 2012, on Leiter's motion, the case was transferred to the Circuit Court for Baltimore County, where all further proceedings occurred.

This appeal reaches us from the grant of summary judgment in favor of Leiter on all four counts. Summary judgment on Count IV was entered in February 2015; summary judgments on Counts I, II, and III were entered, on Leiter's motion to alter or amend the February ruling, in April 2015. The court held that the claims in Counts I through III were barred either by truth, the statute of limitations, or waiver. We shall affirm the Circuit Court judgments.

Mirabile does not address in his brief, and did not address at oral argument, the grounds upon which the summary judgments were entered. His sole complaint is that he was denied his right of discovery, which, in his view, constituted a denial of due process. This is based on the alleged unwillingness of Leiter's attorney to permit her client to be deposed until Mirabile's deposition was completed.

Immediately upon transfer of the case in November 2012, the County Administrative Judge in Baltimore County entered a scheduling order that, among other things, directed that discovery be completed by April 20, 2013. In December 2012, Leiter served on Mirabile a set of interrogatories, a demand for the production of documents, and a notice to take his deposition. In February 2013, counsel for Mirabile filed a notice to take Leiter's deposition, but, without contradiction, counsel for Leiter asserted that an agreement was reached between the attorneys that Leiter's deposition would await completion of Mirabile's, so that she would know and be able to respond to

the specific facts alleged by Mirabile. Mirabile never filed a motion to compel Leiter's deposition until after the last discovery deadline had expired.

It took more than a year for the discovery sought by Leiter to be even nearly completed, all due to delays on the part of Mirabile. He first appeared for deposition in February 2013 but failed to bring any of the requested documents. Documents and responses to interrogatories were thereafter produced in piecemeal fashion, and attempts at deposing Mirabile were postponed, cancelled, or cut short because of his failure to produce requested documents or because of claims of ill health on his part.<sup>1</sup> Mirabile appeared six or seven times for his deposition, but it never was completed.

The deadline for completing discovery was extended five times, the last deadline being March 15, 2014. At the penultimate attempt to complete his deposition, on February 18, 2014, Mirabile left the room before any questions could be asked because he claimed that Leiter was "smirking," which counsel for Leiter denied. The deposition was rescheduled for February 26.

At that point, due to the death of his attorney, Mirabile was self-represented. On February 18, 2014, he served a demand for the production of documents and a notice to take Leiter's deposition on March 20, 2014. That was the first (and only) notice to depose Leiter since the one filed by Mirabile's attorney a year earlier which, as noted,

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<sup>1</sup> In January 2014, Mirabile moved to stay discovery by reasons of his ill health. As pointed out by Leiter, however, he failed to inform the court that he was then an active candidate for election to the House of Delegates.

had effectively been cancelled because of the agreement to delay that deposition until Mirabile's deposition was completed. Leiter responded on March 13 and again on March 18 that (1) March 15, 2014 was the deadline for completion of discovery, (2) as Leiter had 30 days, plus three days for mailing, to respond to the demand for documents, the request was untimely, and (3) as March 20 also was beyond the deadline, Leiter would not be appearing for a deposition.

On April 30, 2014, Leiter filed her motion for summary judgment. As to the defamation claims (Counts I through III), she argued that, to the extent any of the statements complained of were made **prior** to the settlement agreement of November 23, 2010 or Consent Order of December 1, 2010, those claims were barred by the one-year statute of limitations applicable to defamation claims (Code, Courts Article §5-105) and, to the extent they were made **after** those dates, they were either extinguished by the release contained in the settlement agreement and consent order or were, in fact, true. As to Count IV, the claim for intentional infliction of emotional distress, that too, she argued, was barred by the release in the settlement agreement and, in addition, failed to establish the elements of the tort or that the damages asserted were caused by the alleged conduct of Leiter.

As noted, the summary judgment granted by the court was based on its acceptance of those defenses, and Mirabile has failed to articulate any reason why those defenses were not valid ones. This appeal is based solely on his claim that he was denied an opportunity for discovery, but the record fails to provide any support for that claim. He

was not denied an opportunity to file interrogatories, requests for the production of documents, a demand for the admission of facts, or a notice to take Leiter's or anyone else's deposition. If he believed that he had the right to proceed with discovery before the completion of his own deposition, he could have exercised that right and, upon any failure of Leiter to respond, filed a motion to compel performance. He made no effort to do that until after the deadline for discovery had passed. We find no error in the court's rulings.

**JUDGMENT AFFIRMED; APPELLANT  
TO PAY THE COSTS**