UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1042

September Term, 2015

BENJAMIN WELLS, III

v.

INNOPLEX, LLC

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

JJ.

Opinion by Zarnoch, J.

Filed: June 28, 2016

In early 2011, appellant Benjamin Wells, III, was recruited by appellee, Innoplex, LLC, to develop its public sector business, specifically by securing contracts with the U.S. Postal Service.[1] Wells's contract stated that his employment was "at-will" but also purported to restrict the conditions of his termination. In October of 2011, Innoplex terminated Wells's employment. Almost three years later, Wells brought suit in the Circuit Court for Howard County for breach of contract. Innoplex moved to dismiss the complaint for failure to state a claim, and, on April 23, 2015, the court dismissed Wells's complaint without leave to amend. Wells did not appeal that decision. Instead, he filed a motion for reconsideration in the circuit court, which was denied. Wells thereafter noted this appeal, and presents the following question for our review, which we have rephrased:

> Did the circuit court abuse its discretion in denying Wells's motion for reconsideration and request for leave to file an amended complaint?[2]

For the reasons set forth below, we conclude that the court did not abuse its discretion in denying Wells's motion. Accordingly, we affirm.

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[1] Innoplex is a defense contractor located in Columbia, Maryland. Innoplex was incorporated as Intelligent Solutions for Information Systems, LLC, also known as ISIS, during the time of its employment relationship with Wells. ISIS, for obvious reasons, changed its name to Innoplex, LLC on or about December 2014.

[2] Wells characterizes the questions presented in the following manner:

1. "Did the Circuit Court abuse its discretion when it denied Appellant's motion for reconsideration of the Circuit Court's prior order granting Defendant's Motion to dismiss Appellant's First Amended Complaint which alleged that Defendant had breached its employment contract with Appellant?"
2. "Did the Circuit Court abuse its discretion when it denied Appellant's motion for leave to file a Second Amended Complaint?"

BACKGROUND

In January 2011, Wells was recruited by the owner of Innoplex to be employed as president of a subdivision of the company and "to create and operate the public sector and commercial business division of the company." Prior to that time, Wells was working as the CEO of a security technology company headquartered in New Orleans, Louisiana.

After two months of negotiations, in March 2011, the parties entered into a written employment contract, which described the terms and conditions of Wells's employment as the president of Innoplex's public sector division. Pursuant to the parties' contract, Wells's duties were to "establish, develop and grow [Innoplex] core competencies in the newly created Public Sector & Commercial Business Division of [Innoplex]." The contract also contained a provision that described Wells as an at-will employee, but limited the circumstances under which Wells could be terminated. The contract stated:

> Notwithstanding anything in this Letter to the contrary, you will be considered an "employee-at-will," and both you and the CEO will retain the right to terminate the employment relationship at any time. However, as an Executive member of the company management team, there will be no "Termination for convenience" - The CEO and President will jointly develop reasons for termination, but fundamentally, reasons for termination would revolve around behaviors that could damage the image, standing, or relationships the company has with existing and/or future clients.

From March 2011 to October 2011, Wells was employed by Innoplex. The parties disagree over whether he adequately performed his duties under the contract.

On October 17, 2011, Wells was told he was being terminated, and was sent a follow up letter describing the reasons for Wells's termination. According to the letter,

Innoplex terminated Wells's employment for three reasons: 1) Wells's "[i]nability to develop and garner work/contracts with the United States Postal Service (USPS) and other business ventures discussed as part of the original employment agreement[;]" 2) his "[i]nability to recruit/hire 10 new employees by 30 September, 2011[;]" and 3) Innoplex had decided "to not pursue development of a Public Sector Commercial Business Unit at the present time[.]" Three years later, on October 17, 2014, Wells filed a one-count complaint against Innoplex in the Circuit Court of Howard County alleging breach of contract.[3]

Innoplex filed a motion to dismiss, or, in the alternative, motion for summary judgment, arguing that Wells's claim for breach of contract failed as a matter of law. The court held a hearing on February 27, 2015, in which the court dismissed claims against Innoplex president and Chief Executive Officer Philip Green and against Innoplex member and Chief Technology Officer Christopher Hawthorne. With regard to Wells's claim against Innoplex, the court postponed the hearing and granted Wells thirty days to file an amended complaint. The hearing was rescheduled for April 23, 2015. Wells failed to file an amended complaint within the time granted by the court, and instead filed

[3] In a letter to Innoplex's CEO, Wells disputed his termination: "I reviewed meticulously my assigned tasks, rehearsed unrelentingly my performance and scrutinized carefully my contribution to [Innoplex] and cannot identify one valid reason for my termination."

an amended complaint on April 15, 2015, seventeen days after the court-imposed deadline, and eight days before the rescheduled hearing.[4]

At the April 23 hearing, Innoplex made an oral motion to dismiss the amended complaint, arguing that Wells failed to state a claim upon which relief could be granted. After hearing from both counsel, the court agreed and dismissed Wells's amended complaint with prejudice. The court stated:

> I don't believe that there's an ambiguity in this [contract]. . . . [E]verybody agrees he's an at will employee. There's an intent to limit, by contract, the ability to terminate on a permissible [basis], is the way I'll put it, because a termination for convenience is limited by certain concerns at law. But, that's why I say permissible [basis]. And the intention is not to allow terminations for mere convenience. There's a statement to establish broad parameters for reasons of termination, but it doesn't turn him into a for cause termination employee.
>
> And the reasons given, that are asserted in paragraph seventeen, are consistent with the broad language established in paragraph eight of the . . . contract, and to me there's no ambiguity.[5] So I don't find that . . . there's been an allegation of material facts in support of . . . count one. And, as such, I'll grant the motion to dismiss as to count one for failure to state a claim.

The court entered an order that same day reflecting his ruling at the hearing. The court did not grant Wells leave to amend the complaint a third time.

[4] In his amended complaint, Wells also asserted a claim for wrongful termination. At the April 23, 2015, hearing, the court dismissed Wells's claim for wrongful termination because Wells failed to plead a violation of public policy, which is requisite to maintain this cause of action.

[5] Paragraph 17 of the first amended complaint referred to the reasons given by Innoplex for Wells's dismissal, described *supra*, page 3.

Wells did not file an appeal of the April 23, 2015 order. Instead, on May 22, 2015, he filed a motion to revise the court's final judgment, requesting that the court allow him leave to file another amended complaint, and attaching a copy of the draft complaint. Wells argued that the amended complaint alleged new facts supporting a breach of contract claim and would not prejudice Innoplex. Innoplex opposed the motion. On June 18, 2015, the court denied the motion to revise judgment. Wells filed a notice of appeal to this Court on July 15, 2015.

DISCUSSION

Wells appealed from the denial of his motion to revise judgment, filed pursuant to Maryland Rule 2-535.[6] Thus, this appeal is resolved by a proper consideration of the appropriate standard of appellate review for an appeal from the denial of a motion to revise judgment.

Pursuant to Md. Rule 8-202(a), a notice of appeal must be "filed within 30 days of the entry of the judgment or order from which the appeal is taken." However, a motion invoking the trial court's revisory power under Rule 2-535 will not stay the time for filing an appeal unless the motion is filed within ten days of the judgment or order. *Furda v. State*, 193 Md. App. 371, 377 n.1 (2010); *see Unnamed Att'y v. Att'y Grievance Comm'n,* 303 Md. 473, 486 (1985). For this reason, "[w]hen a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court

[6] Rule 2-535(a) provides that "[o]n motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment[.]"

resolves the revisory motion addresses only the issues generated by the revisory motion." *Furda*, 193 Md. App. at 377 n.1.

Thus, "[a]n appeal from the denial of a motion asking the court to exercise its revisory power is not . . . the same as an appeal from the judgment itself. Rather, the standard of review is whether the trial court abused its discretion in declining to revise the judgment." *Bennett v. State Dept. of Assessments And Taxation*, 171 Md. App. 197, 203 (2006) (quoting *Green v. Brooks,* 125 Md. App. 349, 362 (1999)), cert. denied, 397 Md. 396 (2007); *see Wilson-X v. Dep't of Human Res.*, 403 Md. 667, 674-75 (2008) (stating that "the ruling on a motion for reconsideration is ordinarily discretionary, and . . . the standard of review in such a circumstance is whether the court abused its discretion in denying the motion). Accordingly, although we ordinarily review a circuit court's dismissal of a complaint *de novo*, *Reichs Ford Rd. Joint Venture v. State Roads Comm'n*, 388 Md. 500, 509 (2005) (Citation omitted), we review the court's decision here for abuse of discretion.

Much of Wells's argument on appeal addresses the propriety of the circuit court's initial decision, on April 23, 2015, to dismiss his complaint. Wells argues that the court erroneously determined that the language of the contract was unambiguous in its description of him as an at-will employee. He contends that, as a matter of law, the proper interpretation of the contract is that its provisions concerning employment and termination conditions are ambiguous, and, as a result, the ultimate interpretation of these

provisions should be resolved by the trier of fact.[7] *See Univ. of Baltimore v. Iz*, 123 Md. App. 135, 162 (1998) (citing *Shapiro v. Massengill*, 105 Md. App. 743, 754-55 (1995)).

However, as discussed above, we do not consider the propriety of the circuit court's initial decision to dismiss the complaint, because Wells did not appeal that

[7] If the issue were properly before us, we may have agreed with Wells that the contract is ambiguous. The contract states in the same paragraph that Wells was an "employee-at-will," and that "there will be no 'Termination for convenience[.]'" The contract further provides that Wells may only be terminated for reasons agreed upon by Wells and the president of Innoplex, which would "revolve around behaviors that could damage the image, standing, or relationships the company has with existing and/or future clients." Calling the employment "at-will" and, in the same breath, restricting the reasons for termination seems to be the very definition of ambiguity.

However, Wells's complaint may not have survived a motion to dismiss even if the court found the contract to be ambiguous. The reasons given by Innoplex for Wells's dismissal, arguably, were within the bounds of for-cause termination outlined by the contract. The termination letter stated that Wells's "[i]nability to develop and garner work/contracts with the United States Postal Service (USPS) and other business ventures discussed as part of the original employment agreement[,]" and his "[i]nability to recruit/hire 10 new employees by 30 September, 2011" were the causes of his dismissal. A court could interpret these reasons as "behaviors that could damage the image, standing, or relationships the company has with existing and/or future clients"—a cause for termination under the employment contract.

Finally, we note that Innoplex gave one other reason for Wells's termination: it had decided "to not pursue development of a Public Sector Commercial Business Unit at the present time[.]" An employee terminable for cause may still be fired if his or her employer disbands the entire department or if the position is abolished. *See Maryland Classified Employees Ass'n, Inc. v. State*, 346 Md. 1, 22 (1997) ("The law is well established that 'an employee who loses his or her job . . . is not entitled to a hearing, despite the presence of a 'no dismissal except for cause' rule, when the position is abolished pursuant to a *bona fide* government reorganization or kindred cost-cutting measure" (quoting *Digiacinto v. Harford County*, 818 F. Supp. 903, 905-06 (D. Md. 1993)); *Workers' Comp. Comm'n v. Driver*, 336 Md. 105, 118 (1994). Thus, if Innoplex had abolished Wells's division within the company, his "for cause" status may not have allowed him to keep his position in any event.

decision. We consider only whether the court abused its discretion in failing to revise its judgment to allow Wells to file a second amended complaint.

With regard to the court's denial of his motion to revise judgment, Wells argues that the court abused its discretion by failing to abide by Maryland's policy of liberally allowing amendments to a complaint. Wells relies on statements by this Court directing that amendments to complaints should be allowed "freely and liberally," and stating that the circuit court should reject amendments only in "rare occasions." *Asphalt & Concrete Services, Inc. v. Perry*, 221 Md. App. 235, 269 (2015), *aff'd,* 447 Md. 31 (2016) (Citations omitted). Indeed, Maryland Rule 2-341(a) provides that a "party may file an amendment to a pleading without leave of court by the date set forth in a scheduling order or, if there is no scheduling order, no later than 30 days before a scheduled trial date." Subsection (c) provides "[a]mendments shall be freely allowed when justice so permits."

Implicit in these statements is the understanding that the action is still viable and has not been dismissed. There is no rule or judicial statement that allows complaints to be freely amended *after* a case has been dismissed or a judgment has been entered. Considering the analogous federal rule, federal courts have dismissed arguments that complaints can be liberally amended after judgment has been entered. *See, e.g.*, *Harris v. City of Auburn*, 27 F.3d 1284, 1287 (7th Cir. 1994) (citing *First Nat'l Bank v. Continental Illinois Nat'l Bank*, 933 F.2d 466, 468 (7th Cir. 1991)) (holding that "the presumption that leave to amend shall be freely given pursuant to Rule 15(a) [of the Federal Rules of Civil Procedure] disappears after judgment has been entered"). Wells cannot rely on

Maryland's liberal amendment policy or Maryland Rule 2-341 to argue that the court abused its discretion in denying him leave to amend his complaint.

An abuse of discretion "occurs when a [court] exercises discretion in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." *Garg v. Garg*, 393 Md. 225, 238 (2006) (quoting *Jenkins v. State*, 375 Md. 284, 295-96 (2003). We are mindful that the court gave Wells an opportunity to amend his initial complaint after the February 27, 2015 hearing. Even though Wells filed his first amended complaint on April 15, 2015—well past the 30-day deadline set by the court—the court still considered the allegations set forth in the amended complaint, and found them wanting.

Here, Wells's motion to revise judgment described several new facts that, in his opinion, constituted additional breaches of his employment contract. Wells asserted that, in addition his termination without cause, Innoplex breached the contract by failing to provide him with a company vehicle, failing to create and develop the unit he was supposed to oversee, and failing to provide him with certain financial benefits. However, Wells presented no new arguments for why the court should have reconsidered its ruling that the contract was unambiguously at-will. Moreover, his sole request was for the court to revive the action on the basis of the new facts alleged in the complaint attached to the motion. He did not provide a reason why these new allegations were not raised in the previous complaints. His arguments primarily relied on Rule 2-341, which, as discussed above, is inapplicable to circumstances in which judgment has been entered.

We cannot say that the circuit court abused its discretion in this circumstance. For the above reasons, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.