UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1062

September Term, 2015

PENNY WILLETT

v.

CHRISTOPHER WILLETT

Graeff,
Reed,
Sharer, Frederick J.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed:

At their divorce hearing on March 18, 2008, Penny Willett ("appellant") and Christopher Willett ("appellee") entered into a settlement agreement ("agreement") on the record. The agreement provided that the appellee would compensate the appellant as an employee of his business for the next seven or eight years, depending on the business' growth. In September 2014, approximately six and a half years after the divorce hearing, the appellee stopped making payments under the agreement. Therefore, the appellant, believing the appellee had not fully lived up to his end of the bargain, filed a petition for contempt and motion to enforce the agreement ("enforcement petition") in the Circuit Court for Montgomery County. According to the appellee, however, the agreement had in fact been fully satisfied by the time he stopped making payments because he advanced the appellant $67,404.17 at her request from 2010 to 2013. For that reason, the appellee filed a motion for summary judgment, which the circuit court subsequently granted without a hearing.

The appellant presents two questions for our review, which, for clarity, we have reduced to one and rephrased:[1]

[1] The appellant presents the following question in her brief:

1. Did the trial court err by failing to hold a hearing as required by Md. R[ule] 2-311(f) prior to rendering a decision on Appellee's Motion for Summary Judgment?

2. Did the trial court err in granting Appell[ee]'s Motion for Summary Judgment [and] dismissing Appellant's Verified Petition for Contempt when the pleadings and affidavits submitted in the case raised significant disputes as to material facts which were improperly decided as a matter of law?

1. Did the circuit court err where it granted the appellee's motion for summary judgment without a hearing?

For the following reasons, we answer this question in the affirmative and, therefore, reverse the judgment below.

FACTUAL AND PROCEDURAL BACKGROUND

The appellant and the appellee were married on October 17, 1996. On August 25, 2006, the appellant filed a complaint for absolute divorce against the appellee. A divorce hearing was held on March 18, 2008, during which the parties entered into a settlement agreement on the record. The agreement was incorporated, but not merged, into the parties' judgment of absolute divorce. Because the agreement was never reduced to writing, the following portion of the hearing record is the only existing representation of its relevant parts:

> [A. Support:] The parties have agreed that in lieu of alimony, [the appellee] will provide [the appellant] with compensation as an employee of his business at a salary of $1,800 per week for seven years. Such salary shall begin April 1, 2008.
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> * * *
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> [B. Business Records:] If [the appellee's] business has tripled the profits it had in 2007, during the seventh year after this agreement, [the appellee] shall continue [the appellant's] compensation, including health insurance and car payment – and the provision of a car as above for an additional year.

The appellee performed his obligations under the agreement until September 2014, at which time he stopped making the requisite weekly payments to his former spouse. According to him, he completed his performance obligations early, *i.e.*, prior to the expiration of the seven or eight years contemplated by the agreement. His argument is

based on the allegation that certain payments he made to the appellant at her own request from 2010 to 2013, which totaled $67,404.17, constituted "advancements." The total amount of the alleged advancements represents the sum of $38,969.52, which the appellee gave the appellant in 2010 so that she could pay off her tax liabilities, and $28,434.65, which the appellee gave the appellant from 2011 to 2013 to help her pay her student loan debt. The 2010 monies were given to the appellant via two separate checks, both having the word "advance" written in their notation sections. However, the appellant crossed out the word "advance" on one of those checks, apparently without the knowledge or consent of the appellee. With regard to the payments in the amount of $28,434.65 that were made so the appellant could pay her student loan debt, "[i]t is not as clear," in the appellee's own words, "that the[se] . . . payments were made as advances because there is not a similar notation indicating . . . [such an] intention." Appellee's Br. at 13.

On January 12, 2015, the appellant filed her enforcement petition in the Circuit Court for Montgomery County. When the appellee failed to respond to the petition, the appellant moved for a default judgment on March 8, 2015. On the same date, the appellee filed an untimely answer to the petition. Although the circuit court granted the appellant's motion for default judgment on March 11, 2015, it subsequently found that the appellee had shown good cause for the late filing of his answer. Therefore, on March 31, 2015, the circuit court vacated its earlier order granting the motion for default judgment.

On May 15, 2015, before responding to the appellant's interrogatories and request for production of documents, the appellee filed a motion for summary judgment. The appellant filed an opposition to the motion for summary judgment on June 12, 2015.

Within her opposition, the appellant also requested a hearing. The appellee did not file a response to the appellant's opposition or request for a hearing.

On June 19, 2015, without holding a hearing, the circuit court granted the appellee's motion for summary judgment and dismissed the appellant's enforcement petition. On July 17, 2015, the appellant noted a timely appeal.

DISCUSSION

I. GRANTING OF THE MOTION FOR SUMMARY JUDGMENT

A. The Contentions of the Parties

The appellant argues that "the circuit court's failure to hold a hearing was plain error, in contravention of Maryland Rule 2-311(f) and mandates reversal of the circuit court's decision on that basis alone." Appellant's Br. at 8. "The mandate of . . . Rule [2-311(f)] is so clear," according to the appellant, "that even in cases where a party has not properly requested a hearing, this Court has held it was reversible error not to hold one." Appellant's Br. at 8.

In addition to the alleged procedural error described above, the appellant asserts that summary judgment was not appropriate in this case because the pleadings demonstrated that material facts were in dispute. In particular, the appellant contends that the "conclusory" statements made by her former spouse about how he advanced funds to her to help her pay off her tax liabilities and student debt are disputed. Regarding the funds that were meant to help her pay off her tax liabilities in particular, the appellant argues that she

> learned for the first time that Appellee had failed to file the couple's tax returns for the years 2003-2008, resulting in a tax penalty against Ms. Willett. When Ms. Willett brought this issue to Appellee's attention after their divorce and Settlement Agreement, Appellee suggested that his own accountant prepare and file Ms. Willett's taxes and that Appellee would pay the tax penalty by way of an additional "bonus" to cover the tax liability in full.

Id. at 11 (citations to appendix omitted) (underline in original). Likewise, the appellant asserts there is "contradicting evidence in the record . . . [regarding whether] the payment of Ms. Willett's student loan was either an 'advance' or a 'gift.'" *Id.* She contends that throughout their marriage the appellee told her he would pay for her student debt, which is why said debt was not addressed in the agreement.

The appellee categorizes both the tax liability and student loan funds as "advancements" rather than "gifts." He claims that he gave the tax liability money to the appellant by "issu[ing] two checks. . . for a total of $38,969.52 with the word 'advance' in the notation section of these checks." Appellee's Br. at 12. He alleges that the appellant fraudulently altered one of these checks by crossing out the word "advance" in violation of Md. Code Ann., Com. Law § 3-407. Similarly, the appellee contends that he intended the $28,434.65 he gave the appellant so that she could pay off her student loan debt to be an "advance" under the agreement rather than a "gift." He acknowledges that "[i]t is not as clear that the student loan payments were made as advances because there is not a similar notation indicating Appell[ee]'s intention[,]" but argues that this is irrelevant because notwithstanding the student loan money, he still paid the appellant more than the maximum amount she was entitled to under the agreement. Appellee's Br. at 13.

Regarding a hearing, the appellee asserts the circuit court did not commit reversible error where it did not hold one before disposing of the appellant's claim. Particularly, the appellee contends that "Appellant untimely filed her Opposition to Motion for Summary Judgment and Request for a Hearing and failed to ask the court for an extension of time to respond to the Motion." *Id.* at 9. Therefore, according to the appellee, the circuit court did not err where it granted his motion for summary judgment without a hearing.

B. Standard of Review

With regard to whether the circuit court erred in granting the motion for summary judgment without a hearing, we turn to Maryland Rule 2-311, which provides:

> **(b) Response.** Except as otherwise provided in this section, a party against whom a motion is directed *shall file any response within 15 days after being served with the motion*, or within the time allowed for a party's original pleading pursuant to Rule 2-321(a), whichever is later. Unless the court orders otherwise, no response need be filed to a motion filed pursuant to Rule 1-204, 2-532, 2-533, or 2-534. *If a party fails to file a response required by this section, the court may proceed to rule on the motion.*
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> * * *
>
> **(f) Hearing--Other Motions.** A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading "Request for Hearing." The title of the motion or response 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 or defense without a hearing if one was requested as provided in this section.*

Id. at §§ 2-311(b) & (f) (emphasis added).

If the circuit court did not violate Rule 2-311(f) where it "render[ed] a decision that [wa]s a disposition of [the appellant's] claim . . . without a hearing," *id.*, then we will turn to the more fundamental question of whether summary judgment was appropriate in this case. With respect to this question, we have articulated the standard of review as follows:

> Summary judgment is appropriate only when, after viewing the motion and response in favor of the non-moving party, there is no genuine issue of material fact, and the party in whose favor judgment is entered is entitled to judgment as a matter of law. *Pittman v. Atl. Realty Co.,* 127 Md. App. 255, 269, 732 A.2d 912, *rev'd on other grounds,* 359 Md. 513, 754 A.2d 1030 (2000); Md. Rule 2-501(e). In short, when there is no genuine issue of material fact, our standard of review "is whether the trial court was legally correct." *Heat & Power Corp. v. Air Prods. & Chems., Inc.,* 320 Md. 584, 591, 578 A.2d 1202 (1990). In making that determination, "we do not accord deference to the trial court's legal conclusions." *Lopata v. Miller,* 122 Md. App. 76, 83, 712 A.2d 24 (1998). In fact, we review the trial court's legal conclusions de novo. *See Matthews v. Howell,* 359 Md. 152, 162, 753 A.2d 69 (2000). Applying that standard to the instant case, we conclude, for the reasons set forth below, that the circuit court was legally correct in granting appellees' motion for summary judgment.

Moscarillo v. Prof'l Risk Mgmt. Servs., Inc., 169 Md. App. 137, 144-45 (2006), *aff'd*, 398 Md. 529 (2007).

C. Analysis

i. Was a hearing required?

Whether a hearing was required in this case, as well as the manner in which the appellant was obliged to go about requesting a hearing, are both governed by Md. Rule 2-311. That Rule mandates that "the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section." Md.

Rule 2-311(f). This case clearly presents a situation in which the court, by virtue of granting the appellee's motion for summary judgment, "render[ed] a decision that [wa]s dispositive of a claim . . . without a hearing." *Id.* However, what is less clear is whether "a hearing . . . was requested as provided in this section." *Id.*

So just how does Md. Rule 2-311(f) provide that a request for a hearing on a motion be made? The answer to this question lies in the first two sentences of the Section itself, which indicate:

> A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the hearing "Request for Hearing." The title of the motion or response shall state that a hearing is requested.

Id. Accordingly, if the appellant desired a hearing on the appellee's motion for summary judgment, she was required to request one in her responsive pleading to said motion. Such response pleadings are governed by Md. Rule 2-311(b), which provides that

> a party against whom a motion is directed shall file any response within 15 days after being served with the motion, or within the time allowed for a party's original pleading pursuant to Rule 2-321(a), whichever is later. . . . If a party fails to file a response required by this section, the court may proceed to rule on the motion.

In this case, 15 days after the appellant was served with the motion for summary judgment was later than the time she had for her original pleading pursuant to Md. Rule 2-321(a). Therefore, the appellant had 15 days from May 15, 2015 (the date the appellant was mailed a copy of the motion for summary judgment via first class mail, postage prepaid), in which

to file a responsive pleading containing an appropriately-headed request for a hearing if one was so desired. *See* Md. Rule 2-311(b) & (f).

We turn now to the record, which indicates that the appellant filed her opposition to the motion for summary judgment, which contained her request for a hearing, on June 12, 2015. This was well beyond the 15-day deadline imposed by Md. Rule 2-311(b). The appellant attempts to minimize the consequences of her untimeliness by advancing two pointed arguments. First, she argues that email correspondence between her counsel and the appellee's counsel indicates that the appellee consented to allowing the appellant an extension for filing her opposition. Second, she asserts that even in cases where a hearing was not properly requested, this Court has consistently held that a hearing was required. We shall address each of these arguments in turn.

We begin with the fact that the appellee's counsel consented via email to the appellant filing her opposition beyond the deadline. We hold that the existence of this fact does not translate to reversible error by the circuit court where it granted the motion for summary judgment without a hearing. The appellant argues that "[the appellee] fails to cite any statute or case law to support his argument that when the parties consent to an extension of time, there is a forfeiture of the mandatory hearing requirement as a matter of law." Appellant's Reply Br. at 2. However, regardless of whether or not such case law exists, it is more important that the appellant did not request an extension from the court.[2] In our

[2] While it is significant that appellant's counsel did not request an extension of time within which to reply to the motion for summary judgment, in our view the Rules of Professional Conduct implicitly, if not actually, impose on appellee's counsel the obligation to bring the consent to the late filing to the attention of the court.

view, the court cannot be imputed with having knowledge of private emails communications between the parties' attorneys. We are reviewing whether the circuit court erred in not holding a hearing before granting the motion for summary judgment. There is no evidence in the record, and the appellant does not allege, that the court was aware of the email communications between counsel regarding the extension. Therefore, because the appellant's request for a hearing was filed approximately two weeks beyond the deadline, we hold that the appellant's first argument as to why the request for a hearing was sufficient is without merit.

Likewise, we hold that the appellant's second argument regarding the sufficiency of her request for a hearing is also meritless. While it is true that we have liberally construed the heading requirement of Md. Rule 2-311(b) in a number of cases, the same cannot be said when it comes to the filing deadline. The reason we have not construed the heading requirement with absolute strictness is because "[o]rdinarily, 'magic words' are not essential to successful pleading in Maryland." *Alitalia Linee Aeree Italiane v. Tornillo,* 320 Md. 192, 195 (1990). This is because "[c]ourts and administrative agencies are expected to look at the substance of the allegations before them, not merely at labels or conclusory averments." *Id. See also Hill v. Hill*, 118 Md. App. 36, 44 (1997) (explaining that "under Maryland law, when motions and other pleadings are considered by a trial judge, it is the [substance] of the pleading that governs the outcome, and not its [form]. In other words, the nature of a motion is determined by the relief it seeks and not by its label or caption."). The policy considerations underlying our willingness in some cases to hold that hearing requests lacking the proper heading are nevertheless valid do not apply to the filing

deadline. In fact, the appellant cannot point to a single case in which we held that reversible error was committed where a trial court disposed of a claim without a hearing and a hearing was requested as late as it was here. Therefore, the appellant's second argument, like her first, is without merit.

For the aforementioned reasons, we hold that the circuit court did not commit reversible error because it did not hold a hearing on the motion for summary judgment.

ii. Was summary judgment appropriate?

We now turn our attention to whether the entry of summary judgment was appropriate in this case. As indicated above, "[s]ummary judgment is appropriate where 'there is no genuine dispute as to any material fact' and 'the party in whose favor judgment is entered is entitled to judgment as a matter of law.'" *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294 (2007) (quoting Md. Rule 2-501(f)). Moreover, "[e]ven if the non-moving party identifies a factual dispute, this showing will not prevent summary judgment unless the dispute concerns a 'material' fact, that is, a fact whose resolution will somehow affect the outcome of the case." *Stewart Title Guar. Co. v. West*, 110 Md. App. 114, 133 (1996). In light of these well-established legal principles, we shall hold that the facts of this case are such that the entry of summary judgment was inappropriate. We explain.

The parties agreed at their divorce hearing that in lieu of alimony, the appellee would provide the appellant with (1) a salary of $1,800 per week as an employee of his company, (2) health insurance coverage, and (3) a vehicle, including payment of all costs associated with said vehicle. This agreement was to last for seven years, unless the appellee's business tripled its 2007 profits during the seventh year, in which case the

appellee was to provide the appellant with the aforementioned benefits for one additional year. The agreement went into effect on April 1, 2008. If the agreement were to last seven years, it would expire on April 1, 2015, by which date the appellant would have received a total salary of $655,200.00. Appellee's Br. at 12-13. On the other hand, if the business tripled its profits and the agreement had to last for eight years, then the agreement would expire on April 1, 2016, and the appellant's total combined salary would be $748,000.00. *Id.* at 13. The appellee argues that summary judgment was appropriate because, including the tax liability and student loan payments, he had already paid the appellant a combined salary of $772,814.17, between April 1, 2008, and September 7, 2014. This clearly exceeds the appellant's combined salary entitlement, even in the event the agreement had to remain in effect for an eighth year.

Assuming *arguendo* that the two checks for the combined amount of $38,969.52 that the appellee issued to the appellant to help her pay off her tax liabilities were intended as advancements because of what was written in their notation sections, we are still left to consider the $28,434.65 in student loan payments. The appellee himself admits that "[i]t is not as clear that the student loan payments were made as advances because there is not a similar notation indicating . . . intention." *Id.* Notwithstanding the student loan payments, the appellant received a combined salary of $744,379.52, an amount that is $3,620.48 less than what she would be entitled to under an eight-year agreement. Therefore, if the appellee's business tripled its 2007 profits during the seventh year after the agreement, *i.e.*, during the year beginning April 1, 2014, and ending April 1, 2015, then the appellant would

be entitled to an additional $3,620.48 in salary if, indeed, the student loan money was intended as a "gift."

The pleadings and affidavits in this case contain contradictory allegations with regards to whether the student loan payments were intended as an "advance" or a "gift." The appellee claims these payments were made gratuitously and outside the context of the agreement. The appellant, on the other hand, claims that throughout the parties' marriage, the appellee said he would pay her student loans. According to her, the appellee said he would honor that promise apart from their divorce agreement. If the appellee is entitled to eight years' worth of combined salary, then whether the student loan payments were meant as an "advance" or a "gift" will affect the outcome of the case. The only way to determine if the appellant is in fact entitled to eight years' worth of combined salary is to allow her interrogatories and requests for production of documents.

Our holding in this opinion does not resolve whether the tax liability checks were intended to be advancements. Summary judgment is inappropriate where "there is a genuine dispute regarding *at least one* material fact." *Lowman v. Consol. Rail Corp.*, 68 Md. App. 64, 71 (1986) (quoting *Brown v. Suburban Cadillac*, 260 Md. 251, 257 (1971)) (emphasis added). Even if neither the tax liability payments nor the student loan payments were intended as advancements, the appellant would have received more under the agreement than she was entitled to receive over the course of seven years. Therefore, the only disputes are over whether the agreement should have been extended to embrace an eighth year and, if so, whether the appellant has received eight years' worth of payments under the agreement. Because the amount the appellant received absent the student loan

payments is less than what she would have been entitled to receive under an eight-year agreement, and because there is a genuine dispute as to a material fact concerning those student loan payments, the gratuitous or non-gratuitous intent underlying the tax liability payments is irrelevant. In other words, summary judgment was inappropriate regardless of whether the tax liability payments were intended to be advancements.

For the aforementioned reasons, this case involves at least one material fact in dispute. Therefore, the entry of summary judgment in favor of the appellee was inappropriate.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY MONTGOMERY COUNTY.