UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1208

September Term, 2015

RANDALL FERGUS HUTTON

v.

DIANE THODOS, ET AL.

Krauser, C.J.,
Nazarian
Eyler, James R.
(Retired, Specially Assigned),

JJ.

PER CURIAM

Filed: June 20, 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.

Following a bench trial, the Circuit Court for Cecil County granted judgment in favor of appellees (Diane Thodos, Dillon Sewell, and Brandi Sewell) in a civil action they had filed against appellant, Randall Fergus Hutton, alleging assault, battery, intentional infliction of emotional distress, and invasion of privacy, and awarded appellees compensatory and punitive damages. We vacate that judgment because the court permitted appellees to withdraw their demand for a jury trial and proceed with a bench trial without obtaining Hutton's consent. "Once a jury trial is properly elected by *any* party, it becomes the right of *any* party thereafter to have the case tried before a jury." *Hawes v. Liberty Homes,* 100 Md. App. 222, 234 (1994) (quotation omitted) (emphasis added)). "An election for a jury trial may be withdrawn only with the consent of all the parties not in default." Rule 2-325(f). There was no evidence that Hutton was "in default" and, accordingly, we hold that it was reversible error for the court to proceed with a bench trial in the absence of his consent.

The court further granted appellees' motion for sanctions and ordered Hutton to pay their attorneys' fees. We affirm the judgment for sanctions, which was based on Hutton's apparent frivolous filing of a suggestion for bankruptcy which resulted in the first trial ending abruptly in the midst of jury selection. The circuit court found that the bankruptcy action, which was later dismissed, was filed "in bad faith and without substantial justification." On appeal, Hutton maintains that he filed for bankruptcy "in an effort to discharge any potential

judgment" in this case and "to encourage settlement to avoid unnecessary expenses to all parties." We hold that the circuit court did not err in granting the motion for sanctions.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY FILED ON MARCH 18, 2015 (ENTERED ON MARCH 23, 2015) IN FAVOR OF APPELLEES VACATED; JUDGMENT FOR SANCTIONS AND AWARD OF ATTORNEYS' FEES AFFIRMED. COSTS TO BE SPLIT BETWEEN APPELLANT AND APPELLEES.