UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1574

September Term, 2014

AZIZOLLAH ABRISHAMIAN

v.

PEDRO STEVEN BUARQUE DE MACEDO, et al.

Berger,
Arthur,
Reed,

JJ.

Opinion by Reed, J.

Filed: March 17, 2016

If the previous appeal in this "saga" over an automobile accident was a case that "snowballed into litigation about litigation," we are now confronted with litigation *about* that litigation about litigation. *See Abrishamian v. Washington Medical Group, P.C.*, 216 Md. App. 386, 393 (2014). In a parallel suit to the one underlying the previous appeal, Azizollah Abrishamian ("Mr. Abrishamian"), appellant, and counsel, Edward J. Brown, Esq. ("Mr. Brown"), asserted several claims against appellees, Washington Medical Group, P.C. ("WMG") and Steven Buarque de Macedo, M.D. ("Dr. Macedo"), in the Circuit Court for Montgomery County. Count I of their complaint was an interpleader-type action regarding the dispersal of the remaining funds from a judgment in the original car accident lawsuit. Count II (Breach of Contract), Count III (Fraud), and Count IV (Malicious Use of Process) were all concerning appellant's perceived grievances in the aftermath of the accident's litigation.

Here, as before, "after some fairly complicated (but not really complex) pre-trial wrangling," *id.*, the trial court granted several procedural decisions in favor of appellees, which Mr. Abrishamian now challenges. He presents three questions for our review, which we have reordered and rephrased as follows:[1]

[1] Mr. Abrishamian presented his questions exactly as follows:

A. Did the Court err by prematurely and incorrectly granting Defendants' Motion for Summary Judgment as to Count IV?
B. Did the Court err in Denying Plaintiff's Motion for Order Specifying Issues Not In Dispute With Respect To Interpleader and Later Awarding Defendants a Portion of the Fund?
C. Did the Court err in granting Defendants' untimely Motion to Disqualify Brown, and thereafter striking Brown as an additional Plaintiff without a Hearing, and then denying Plaintiff's Motion to Strike Defendant's Amended Answer?

1. Did the trial court err in granting partial summary judgment in favor of appellees as to appellant's abuse of process/malicious use of process claim?
2. Did the trial court abuse its discretion in granting in part appellee's motion to disqualify counsel, or in denying appellant's motion to strike amended answer?
3. Did the trial court abuse its discretion in denying appellant's motion for order specifying issues not in dispute and subsequently awarding appellees a portion of the funds entered into the court registry?

We answer all three questions in the negative, and therefore affirm the decisions of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

The background of this case largely overlaps with that of our reported opinion in the previous appeal, but we will summarize the necessary parts pertinent to this case.

i. The Car Accident Tort Case

After being referred to WMG following his automobile accident, Mr. Abrishamian signed an "Authorization and Assignment Agreement" ("A&A"), in which he agreed to "pay out of the proceeds of any recovery in my case any and all fees for services by [WMG] to me which are then due and owing, including fees for preparation and testimony." The A&A was also agreed to and signed by three of Mr. Abrishamian's successive attorneys, including Mr. Brown, who ultimately represented him in the tort suit regarding the car accident.

On or about November 10, 2009, Mr. Brown spoke with Dr. Macedo by telephone in preparation for the tort trial, for which Mr. Brown was invoiced for $400.00. According to appellees, Dr. Macedo's office "also informed Mr. Brown multiple times that Dr. Macedo required a $4,000.00 payment before his testimony could proceed" in that case, a

claim which is disputed by appellant. Dr. Macedo did not receive that payment, and did not testify at Mr. Abrishamian's trial. Consequently, WMG's bills were not admitted.

At the conclusion of that trial, a jury returned a verdict in favor of Mr. Abrishamian for $30,000.00; short of the $60,000.00 in past medical expenses that were submitted for consideration. Presumably aggrieved at Dr. Macedo's decision to not testify on his behalf, Mr. Abrishamian did not pay any of his proceeds from that judgment to WMG. It was this decision that spawned the litigation important to this case: litigation that split into two parallel, yet intertwined, paths.

ii. The Companion Case

On January 11, 2010, WMG filed suit in the Montgomery County District Court to enforce the A&A, seeking to recover unpaid medical bills totaling $11,510.00, plus interest and attorney's fees. Mr. Abrishamian filed a jury trial prayer, and the case was transferred to the Circuit Court for Montgomery County on March 24, 2010. Five months later, after discovering that it had in fact received payments from Mr. Abrishamian's Personal Insurance Protection policy ("PIP") that it mistakenly had failed to apply to his account, WMG filed an amended complaint, reducing the amount in dispute to $4,810.00. To appellees, this was a result of nothing more than a clerical error, but to appellant it was a deliberate misrepresentation, intended to "increase[] the amount at issue so as to trigger the concurrent jurisdiction of the [c]ircuit [c]ourt."

A hearing was held on the matter on September 8, 2010, in front of the Honorable Robert A. Greenberg in the Circuit Court for Montgomery County. Judge Greenberg

ultimately granted the appellees' oral voluntary motion to dismiss without prejudice, on the condition that any future proceedings be brought in the district court. In granting the motion, Judge Greenberg said, rather unequivocally, "I can't rush to judgment . . . and say there's been some fraud perpetrated on this court without some really solid evidence. And just to put this to rest, I don't find that evidence here. I just don't." In response, appellant filed the suit that gave rise to this current appeal on September 21, 2010, to be further discussed *infra*.

Appellees re-filed suit in the district court on February 8, 2011, for the $4,810.00 balance, plus interest and attorney's fees. On December 8, 2011, appellant filed a counterclaim in that action, alleging that Dr. Macedo breached a contract with him to appear at the automobile accident tort trial as a medical expert, thereby causing him "to be unable to present approximately $10,510.00 in medical bills and proof of injury and accompanying proof to help establish non-economic damages" at that trial. Appellant demanded a jury trial, and the case was transferred to the Circuit Court for Montgomery County on December 13, 2011.

After some procedural wrangling not relevant to this appeal, appellees filed a motion to disqualify Mr. Brown pursuant to Md. Rule 2-504 and Maryland Lawyer's Rules of Professional Conduct Rule 3.7, arguing that "the core dispute in [that] case – whether Dr. Macedo agreed to serve as an expert witness – centered around a conversation between Dr. Macedo and Mr. Brown about whether Dr. Macedo had agreed unequivocally to testify."

Abrishamian, 216 Md. App. at 397. The Honorable Ronald B. Rubin granted the motion on March 29, 2012.

After a two-day trial, on February 12, 2013, the jury found that appellant owed WMG $2,900.00 for the medical treatment provided to him by appellees. On appeal, appellant challenged "nearly every pre-trial decision the circuit court made." *Id.* at 401. This Court affirmed the trial court's conclusions on March 3, 2014.

iii. The Current Appeal

After the September 8, 2010 hearing (where Judge Greenberg granted appellees' voluntary motion to dismiss to re-file in district court), appellant filed the suit that gave rise to the current appeal on September 21, 2010, in the Circuit Court for Montgomery County. Count I of appellant's complaint was, according to him, an "interpleader action," asking the court to accept $5,174.65 (the remaining funds from the car accident judgment) into the court registry, to distribute those funds among the claimants, and to discharge him and Mr. Brown from any liability relating to those funds. In addition to appellees, appellant also named three other doctors as "claimant-defendants"[2] that had provided him treatment related to the accident: Dr. Richard Wells, M.D., Dr. John Dombrowski, M.D., and Dr.

[2] Appellant also named a "Lorin Bleecker" as claimant-defendant in the lawsuit. The extent of his involvement in the case is not entirely clear from the record, although it appears as though he was named because he was one of the lawyers that signed the A&A with Mr. Abrishamian, prior to Mr. Brown's involvement, on September 2, 2005. According to the complaint, appellant included Mr. Bleecker because he had "claimed an interest, for costs advanced and legal fees." As a result of Mr. Bleecker's disbarment for unrelated reasons, *AGC v. Bleecker*, 414 Md. 417 (2010), the circuit court noted that he likely should not be a party to an interpleader motion. In any event, Mr. Bleecker never filed an answer, and accordingly, the circuit court did not consider his interest in the money.

Joshua Ammerman, M.D. Counts II and III were for breach of contract and fraud, respectively, alleging Dr. Macedo purposively caused damages to, and later defrauded, Mr. Abrishamian when he did not testify in the car accident tort trial and subsequently sued Mr. Abrishamian for his unpaid bills. That suit, according to appellant, was

> a civil action replete with false representations and maintained through vexatious tactics, perjured testimony, and other misconduct, thereby causing [appellant] to unnecessarily and unjustifiably incur attorney's fees and other costs, physical suffering, stress, anxiety and other damages, as well as time spent away from his usual activities.

Importantly, like the rest of the counts in the complaint, Count IV was not explicitly titled, but was, as discussed *infra*, either a "malicious use of process" or "abuse of process" claim, alleging appellees' suit was "a transparent attempt at retaliation" for essentially the same reasons as Counts II and III.

By January 28, 2011, both appellees had filed their answers through prior counsel, generally denying the allegations in the complaint. A month later, Judge Rubin granted appellant's request regarding the interpleader funds, and ordered the clerk to deposit the $5,174.65 into the court's registry and that the funds remain in the registry until the interpleader action had been adjudicated.

After their former counsel's law firm disbanded, appellees hired their current counsel, who entered his appearance on March 14, 2011. Three months later, after conducting his own discovery, appellees' counsel moved to disqualify Mr. Brown as appellant's counsel, because "it became clear" that Mr. Brown "played an important role

in the factual development of the underlying [tort] case." Appellees then moved for partial summary judgment as to Counts II, III, and IV on June 20, 2011.

After several more weeks of procedural wrangling, Judge Rubin held a motions hearing on August 26, 2011, and made two relevant decisions to this appeal. First, appellees had filed a motion to amend their answer to conform with the evidence, because their former counsel's answer consisted of a general denial of the interpleader count, which resulted in a constructive admission of that claim. Judge Rubin denied that motion, "specifically limited" to the interpleader count, finding that, while a specific denial should have been included in the answer, allowing appellees to amend the answer that late in the process would be impermissibly prejudicial to all parties involved. Second, the court then granted, in part, appellees' motion to disqualify Mr. Brown, allowing him to remain as counsel in the case, but precluding his testimony at trial.

On September 9, 2011, the parties appeared for a telephonic hearing, where appellant's counsel orally moved to intervene as a party in the case. While noting that this was "a way to try to end-run [the circuit court's] ruling," Judge Rubin decided to continue the trial, allowing Mr. Brown to file an amended complaint and a written motion to intervene on or before September 30, 2011.

The procedural chronology then becomes somewhat unclear, as it appears appellees filed an amended answer on September 13, 2011, but appellant did not file his motion for Mr. Brown to intervene as a party, with its accompanying amended complaint, until September 30, 2011. In the next uncertain chain of events, according to appellees, appellant

mailed a "service copy of a Motion to Strike Amended Answer" to them on October 3, 2011, but as appellees also point out, no such entry appears on the case's docket entries. In any event, the trial court denied that motion without a hearing on October 26, 2011, (somewhat confusingly) granted appellant's motion for extension of time to move for intervention and/or file an amended complaint on October 28, 2011, and further ordered that Mr. Brown be stricken as a party plaintiff.

On December 8, 2011, appellant moved to dismiss Count II (Breach of Contract), as he was seeking the same relief in his counterclaim in the companion case. The trial court granted the motion two weeks later, over appellees' objection, and the trial was rescheduled for May 14, 2012.

On April 30, 2012, appellees filed their written renewed motion for partial summary judgment "as to the malicious use of process and fraud claims." At a pretrial hearing on May 9, 2012, Judge Rubin granted the motion as to Count IV (Malicious Use of Process), based on the fact that the allegation was based on the underlying, concurrent litigation in the companion case, which had not yet been resolved. During their discussion of that ruling, appellant's counsel sought a continuance of the court's decision based on the timing of the ruling, as he felt he was "not in a position to address the [m]otion" because his "[o]pposition was not even due until some [nine] days later." After the court denied that request, appellant's counsel "again sought reconsideration of the premature [m]otion for [s]ummary [j]udgment," arguing that dismissal without prejudice was instead more appropriate:

> MR. BROWN: But in light of the [c]ourt's denial of the continuance, we would ask the [c]ourt at least to reconsider the issue of dismissal without prejudice versus the summary judgment. Because that would accomplish the same goal without interfering with the trial-by deadlines. But again, having come here today without notice of a motion for summary judgment hearing, and having a case, a summary judgment for the key counsel in the case because of the fact that there's this claim that the other case hasn't resolved, it just seems to be substantial justice [sic] if it's not going to be continued because it was dismissed without prejudice.

The trial court, unpersuaded, denied the motion:

> THE COURT: . . .
>
> I'm going to deny the motion to reconsider, to continue, to kick the can down the road, to do all these things. Look folks. Number one, in Maryland a motion for summary judgment can be made at any time. This is not a circumstance where somebody didn't know, got sandbagged, wasn't prepared, didn't have an opportunity to notice opportunity to be heard, *In re* - I'll muff it, but I'm familiar with the Court of Appeals decision.
>
> This is so obvious and so simple in my judgment that the prior action, A, has to have terminated, and B, has to have terminated in the favor of the claimant so as not to require further briefing. Next issue please?

Further, Judge Rubin declined to grant the motion for summary judgment as to Count III (Fraud), stating: "I'm not inclined to take it up right now. I want to see written briefing on that one. The other legal question to me was simple and straightforward, but this one may not be, so I'm going to defer it." As a result, only Counts I (Interpleader) and III (Fraud) remained.

On May 11, 2012, the parties filed a joint stipulation of dismissal without prejudice as to Count III (Fraud) (and amended it a week later), as that claim would be resolved as a part of the counterclaim in the companion case, leaving only Count I (Interpleader) to be resolved. Appellant then filed a "motion for order specifying issues not in dispute with

respect to interpleader"[3] on May 23, 2012, which was denied during a motions hearing on June 20, 2012.

On April 17, 2013, appellees moved to continue and/or stay the upcoming trial with respect to the interpleader hearing because appellant noted an appeal to the ruling against him in the companion case, which the court granted on April 25, 2013. Four days later, Dr. Wells, the only doctor to respond to the interpleader count, filed his answer to the action.

On March 4, 2014, this Court affirmed the circuit court's ruling in the companion case, in the reported opinion cited *supra*.

Finally, at a scheduling hearing on August 22, 2014, the trial court found that "based on the evidence before [it], there are not [sic] genuine issues of fact remaining to be decided in the case." Accordingly, in a written order filed August 27 (and amended August 29), 2014, the court ordered that the funds deposited in the registry of the court were to be distributed equally between appellees and Dr. Wells.

On September 22, 2014, appellant timely noted this appeal.

[3] *See* Md. Rule 2-501(g) ("Order Specifying Issues or Facts Not in Dispute. When a ruling on a motion for summary judgment does not dispose of the entire action and a trial is necessary, the court may enter an order specifying the issues or facts that are not in genuine dispute. The order controls the subsequent course of the action but may be modified by the court to prevent manifest injustice.").

DISCUSSION

I. THE MALICIOUS USE OF PROCESS/ABUSE OF PROCESS CLAIM

A. Parties' Contentions

Appellant makes four general arguments regarding the circuit court's decision to grant summary judgment as to Count IV of his complaint. He first contends that Judge Rubin erred with regard to the timing of the ruling, because appellees filed their written motion on April 30, 2012, and the court "prematurely conduct[ed] a hearing without notice" on May 9, 2012, before appellant could file his written response. Second, appellant next maintains that appellees only voluntarily withdrew their district court case (with the allegedly overstated requested amount) "to avoid sanctions," and thus, the trial court erred in granting the summary judgment because the "circumstances surrounding voluntary [sic] dismissal created a question of fact." Third, appellant further alleges the trial court erred "in its failure to realize that claims for both malicious use of process and abuse of process were pled initially, as a final and favorable resolution is not an element of the abuse of process claim." Finally, appellant argues the court erred in granting summary judgment, rather than dismissing the action without prejudice.

In response, appellees first argue that appellant "waived any claim that the trial court erred in failing to recognize that he had alleged a claim for 'abuse of process' in Count IV," because (1) their renewed motion for summary judgment sought judgment on "malicious use of process," (2) appellant never "contend[ed] or proffer[ed] that Count IV contemplated a claim for 'abuse of process'" during the hearing on the motion, and (3)

appellant never subsequently filed a written motion for reconsideration or similar motion alleging the court failed to consider an "abuse of process" claim. Next, appellees contend that the trial court properly granted summary judgment without allowing appellant to file a written response because the Maryland Rules (1) do not require a written response, and (2) alternatively, appellant had notice, and the trial court "afforded [a]ppellant every opportunity to be heard on the issues" at the hearing. Lastly, appellees argue that, regardless of whether the trial court considered the motion to be regarding malicious use of process or abuse of process, the court was still legally correct in granting summary judgment as to Count IV, and that any potential error was harmless.

B. Standard of Review

An appellate court determines whether summary judgment was granted properly as a matter of law under a *de novo* standard of review. *Anne Arundel County v. Bell*, 442 Md. 539, 552 (2015). "Before determining whether the [c]ircuit [c]ourt was legally correct in entering judgment as a matter of law . . . , we independently review the record to determine whether there were any genuine disputes of material fact." *Windesheim v. Larocca*, 443 Md. 312, 326 (2015). As this Court has previously summarized such an inquiry:

> "In determining whether a genuine dispute of material fact exists and, if not, what the ruling of law should be, the court examines the pleadings, admissions, and affidavits, etc., resolving all inferences to be drawn therefrom against the moving party." *Gross v. Sussex, Inc.,* 332 Md. 247, 256, 630 A.2d 1156 (1993) (citations omitted). "In other words, all inferences must be resolved against the moving party when determining whether a factual dispute exists, even when the underlying facts are undisputed." *Id.* But, we caution, "the mere existence of a scintilla of evidence in support of the plaintiffs' claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could

> reasonably find for the plaintiff." *Beatty v. Trailmaster Prods., Inc.,*330 Md. 726, 738-39, 625 A.2d 1005 (1993).

Campbell v. Lake Hallowell Homeowners Ass'n, 157 Md. App. 504, 518 (2004).

If no material facts are in dispute, we then determine whether the trial court properly entered summary judgment as a matter of law. *Catalyst Health Solutions, Inc., v. Magill*, 414 Md. 457, 471 (2010). We evaluate the same material from the record and decide the same issues as the circuit court; "[i]ndeed, an appellate court ordinarily may uphold the grant of a summary judgment only on the grounds relied on by the trial court." *Campbell*, 157 Md. App. at 518-19 (internal quotations and citation omitted).

C. Analysis

i. Timing

Before we address the merits, we first turn to the timing of the trial court's hearing in which the motion for summary judgment was granted. In his brief, appellant reproaches Judge Rubin for ruling on the motion for summary judgment on May 9, 2012, because in his view, "it was not ripe for adjudication, as the Opposition was not even due until some 9 days later—May 18, 2012." In his reply brief, appellant accuses appellees of being unable to

> cite any authority to contradict [appellant's] citations to the Rules and controlling precedent regarding the need for due process, notice and a legitimate opportunity to respond, and a hearing. Thus, [a]ppellees simply elect not to address this Court's holdings in *Johnson v. Rowhouses, Inc.*, 120 Md. App. 579 (1988) or *Bits "N" Bytes Computer Supplies v. Chesapeake & Potomac Tel. Co.*, 97 Md. App. 557, 577 fn.9 [sic] (1993).

We disagree with appellant, for two reasons.

First, appellant appears to misunderstand the difference between what we said as *dicta*, and what our *holdings* in those cases actually were. Appellant believes that our holdings in *Johnson* and *Bits "N" Bytes* directly support his position, and he would have us distill from those cases the idea that a circuit court commits *per se* reversible error if it rules on a motion for summary judgment at any point before a written response is filed. He is misguided.

In *Johnson*, our relevant *holding* was that the tenant had waived her right to 15 days to respond to a "revised" motion for summary judgment, because "when an opposing party responds early to a summary judgment motion and in the response does not indicate that any additional response time is needed, the court is justified in deciding the motion forthwith." *Johnson*, 120 Md. App. at 591. Appellant instead relies on a part of that case's dicta, where we said that "[t]here *would be* great merit" to the argument that the court should have granted the tenant an additional 15 days to respond to the "revised" filing, if the tenant had not actually already filed a response within 15 days. *Id*. at 590 (emphasis added).

In *Bits "N" Bytes*, our relevant *holding* was that, even if a motion for summary judgment is made regarding an issue that was a "core" issue to the case,

> it is entirely proper that a party move for summary judgment, and that the case be decided on that basis if there is no dispute as to a material fact. In such circumstances, the only thing the moving party must show is that it is "entitled to judgment as a matter of law," *i.e.,* that its legal argument is correct.

Bits "N" Bytes, 97 Md. App. at 580-81. Appellant instead latches onto a footnote in that case, wherein we commented on the telephone company's decision to move for summary judgment on the day of trial:

> Although a motion for summary judgment can be made at any time in a proceeding when it appears that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, *Myers v. Montgomery Ward & Co.,* 253 Md. 282, 289-90, 252 A.2d 855 (1969), a party is ordinarily entitled to 15 days to respond to a summary judgment motion. *See* Md. Rule 2-311(b). Here, this time period was not shortened by order of court, *see* Md. Rule 1-204, yet BNB was not given any time to respond to the motion that C & P filed the day of trial. BNB, however, did not assert in the circuit court and does not assert before us, that the grant of summary judgment was improper *for this reason.* Thus, that question is not before us.

Id. at 577 n.9 (emphasis in original).

Contrary to appellant's position, we believe the actual synthesis of his relied-upon passages is that *ordinarily*, a party *should* have 15 days to respond to a motion pursuant to Md. Rule 2-311(b), but due to the unique circumstances of those cases, we chose not to address that argument at those times. Appellant does not cite, and we are likewise unable to find, any direct authority – be it rule or case law – for the proposition that a court is unable to rule on a motion before the opposing party files a written response.

Second, appellant was then, and remains today, unable to demonstrate any discernable prejudice from that ruling, and only attempts to do so by "bootstrapping" his other arguments into his discussion. While we are equally hesitant to set forth a bright line rule with the circumstances in this case, we do believe that, ideally, appellant would have had the full 15 days to file a written response. Nevertheless, as we have stated before, we

believe that the overriding concern in such a situation is whether the opposing party was *prejudiced* by the circuit court's decision. *See Baker, Watts & Co. v. Miles & Stockbridge*, 95 Md. App. 145, 161-64 (1993), *superseded by Rule on other grounds as stated by Benway v. Maryland Port Admin.*, 191 Md. App. 22 (2010); *Mayor and City Council of Baltimore v. Burke*, 67 Md. App. 147, 157-58 (1986).

Based on examination of the record, even assuming, *arguendo*, that granting the motion before the 15-day limit without allowing appellant to file a written opposition during a scheduling hearing was improper, the fact remains: for the reasons discussed *infra*, there is no conceivable argument that appellant could have made in a written motion that would have changed the scenario, regardless of whether appellant's claim was for malicious use of process or abuse of process.

ii. Merits

In his densely-constructed discussion, appellant capitalizes on the ambiguous language of Count IV to erect what is essentially some sort of a trefoil knot, with no real discernable main argument. After discussing the timing and notice issue, he discusses his perceived error in Judge Greenberg's decision to grant the voluntary dismissal of the companion case, then cites a multitude of other jurisdictions' cases (at great length) that examine voluntary dismissal in the malicious use of process context. He then abruptly changes gears and argues that Judge Rubin "erred in [his] failure to realize that claims for both malicious use of process and abuse of process were pled initially, as a final and favorable resolution is not an element of the abuse of process claim," then concludes with

a brief rehashing of his argument regarding Judge Rubin's decision to grant summary judgment, instead of a dismissal without prejudice. To appellant's credit, all parties involved in the hearing were guilty of confusing the torts; the action was referred to at various times as "abuse of process," "malicious use of process," and even "malicious abuse of process." Nevertheless, we need not dwell on the distinction long, because at bottom, appellant could not then, and cannot now, state a plausible cause of action for either.

An examination of the transcript of the May 9, 2012 hearing reveals that, semantic confusion aside, all parties appeared to treat Count IV as a "malicious use of process" claim, primarily because the majority of the parties' discussions centered around what effect Judge Greenberg's decision to grant the voluntary dismissal had on the companion case's finality; a favorable termination for the defendant-turned-plaintiff being one of the elements of that tort. The Court of Appeals has previously summarized the elements of malicious use of process as follows:

> The cause of action for malicious use of process has five elements and *all must co-exist to maintain the action*. First, a prior civil proceeding must have been instituted by the defendant. Second, the proceeding must have been instituted without probable cause. Probable cause for purposes of malicious use of process means "a reasonable ground for belief in the existence of such state of facts as would warrant institution of the suit or proceeding complained of." Third, the prior civil proceeding must have been instituted by the defendant with malice. Malice in the context of malicious use of process means that the party instituting proceedings was actuated by an improper motive. As a matter of proof, malice may be inferred from a lack of probable cause. *Fourth, the proceedings must have terminated in favor of the plaintiff*. Finally, the plaintiff must establish that damages were inflicted upon the plaintiff by arrest or imprisonment, by seizure of property, or other special injury which would not necessarily result in all suits prosecuted to recover for a like cause of action.

One Thousand Fleet Ltd. Partnership v. Guerriero, 346 Md. 29, 37 (1997) (emphasis added) (citations omitted).

Because the decision to grant summary judgment is reviewed solely on the ground relied on by the circuit court, the fourth element in *One Thousand Fleet* is the only one we need examine. Appellant argues that voluntary dismissal in front of Judge Greenberg necessarily created a question of fact that was inappropriate for summary judgment, and that it should have been up to the factfinder to determine whether the circumstances satisfied the fourth element. Appellant's argument is unavailing, for three reasons.

First, the voluntary dismissal was not a termination of the proceedings in favor of appellant, because based on a simple review of the record, there was no "termination" by that point at all. By the time the May 9, 2012 hearing had taken place, appellees had refiled in the Montgomery County District Court, per Judge Greenberg's instructions, for the exact same amount as their previously-filed amended complaint. In our view, that alone is sufficient evidence to uphold Judge Rubin's determination in our current appeal. Even if we were to assume that appellant was able to demonstrate the other four elements of malicious use of process, the absence of a single element – here, a favorable termination in his favor – is fatal to his claim.

Second, even if we were to accept that the voluntary dismissal was in fact a termination of that case, our state's treatment of voluntary dismissals clearly dictates that there was no favorable outcome – for *either* party. Rule 2-506 provides, in pertinent part:

> **(c) By Order of Court.** Except as provided in section (a) of this Rule, *a party who has filed a complaint, counterclaim, cross-claim, or third-party claim*

> *may dismiss the claim only by order of court and upon such terms and conditions as the court deems proper.* If a counterclaim has been filed before the filing of a plaintiff's motion for voluntary dismissal, the action shall not be dismissed over the objection of the party who filed the counterclaim unless the counterclaim can remain pending for independent adjudication by the court.

Md. Rule 2-506(c) (emphasis added). In our view, appellees correctly point to *Baltimore & Ohio Railroad Co. v. Equitable Bank, N.A.*:

> A voluntary dismissal without prejudice, under Rule 2–506 is an abandonment of the action; *it settles no rights and is not a final disposition on the merits*. Such a voluntary dismissal vitiates and annuls all prior proceedings and orders in a case.

B&O R. Co., 77 Md. App. 320, 328 (1988) (emphasis added) (citations omitted). If no rights were settled and it was not a final disposition on the merits, there could be no favorable termination for appellant to rely on in this appeal.[4]

And third, while we acknowledge that Judge Rubin could not have known this at the time, we now know that the companion case has concluded, and it never reached a favorable verdict for appellant at any stage of its lifespan. Once that case was given to the jury, they found for appellees; when that case was reviewed by this Court, we affirmed.

[4] We are equally unpersuaded by appellant's attempted end-run around our state's treatment of voluntary dismissals without prejudice by citing to a myriad of other jurisdictions' holdings to show that the circumstances behind a voluntary dismissal can create a fact issue for the jury. Judge Greenberg, in exercising his discretion, found no merit to appellant's argument that appellees had committed any wrongdoing by overstating their claim, and, as the court deemed proper, instructed them to refile only in the district court. Judge Greenberg repeatedly, and rather unequivocally, noted that he was unable to find any evidence of any malfeasance on the part of appellees. To us, that court's clear and repeated belief that appellees had committed no impropriety outweighs any reason to follow the cases cited by appellant from our surrounding jurisdictions.

Therefore, at no point – from the voluntary dismissal to the ultimate losing appeal – did appellant receive any beneficial result, whatsoever, and his claim for malicious use of process must fail.

Turning briefly to appellant's argument that Count IV also contemplated a claim of abuse of process, we primarily hold that this issue was not sufficiently preserved for review, because it was – rather clearly – an appellate afterthought. As discussed *supra*, Count IV's ambiguous language technically could be interpreted as being either malicious use of process or abuse of process. But in our view, the record clearly shows that it was treated as a malicious use of process claim at the hearing, for three reasons.

First, the language of the renewed motion for summary judgment itself shows that appellees were seeking summary judgment "as to the *malicious use of process* and fraud claims." Second, the discussions at the May 9, 2012 hearing were based solely around the lack of a favorable termination of the proceedings in appellant's favor – an element only found in malicious use of process claims – and whether it was appropriate to rule on the motion at all at that stage. Finally, and arguably most importantly, appellant lodged no objection to Judge Rubin's decision to grant summary judgment based on the absence of one of the five elements of malicious use of process, and never discussed the elements of his allegedly still-viable claim for abuse of process.

In the interest of fairness and judicial economy, however, as appellant was unable to advance any arguments about abuse of process in a written motion, we will briefly address his contention. In his brief, appellant chose not to expend much effort arguing that

his apparent abuse of process claim should have survived a summary judgment motion, and perhaps rightfully so.[5] As an initial matter, it is disingenuous at best to claim that an individual count was purposefully drafted to simultaneously assert two distinct, yet similarly named, torts at once. But even if it was drafted that way, his claim would still fall far short of stating a cause of action for abuse of process.

In support of this claim, appellant really only offers the fact that a favorable termination in the appellant's favor is not an element of abuse of process; a point with which we certainly agree. "The elements of abuse of process are: 'first, that the defendant wilfully [sic] used process after it has been issued in a manner not contemplated by law; second, that the defendant acted to satisfy an ulterior motive; and third, that damages resulted from the defendant's use of perverted process.'" *Campbell v. Lake Hallowell Homeowner's Association*, 157 Md. App. 504, 530 (2004) (quoting *One Thousand Fleet*, 346 Md. at 38). Appellant's alleged attempt to plead both causes of action, however, fails to consider that malicious use of process and abuse of process are two separate and distinct causes of action:

> An action for malicious abuse of process is distinguished from an action for malicious use of process, in that the action for abuse of process lies for the improper, unwarranted, and perverted use of process after it has been issued; While that for the malicious use of it lies for causing process to issue maliciously and without reasonable or probable cause. . . . Thus it is said in substance, that the distinction between malicious use and malicious abuse of process is that the malicious use is the employment of process for its ostensible purpose, although without reasonable or probable cause, *whereas*

[5] In his reply brief, appellant expounded his argument regarding abuse of process, but since the majority of those arguments were not raised in his initial brief, we decline to address them. *See Dept. of Housing and Community Development v. Mullen*, 165 Md. App. 624, 661 n.14 (2005).

> *the malicious abuse is the employment of a process in a manner not contemplated by law*.

Herring v. Citizens Bank & Trust Co., 21 Md. App. 517, 532 (1974) (emphasis added) (internal quotations and citations omitted).

Here, there is simply no basis for concluding that appellees used the companion case to accomplish anything other than collecting appellant's unpaid medical expenses. At every stage of both the companion case and the case in front of us now, not a single judge has found any merit to any of appellant's contentions, and neither do we. But even if he was able to prove that appellees' litigation was for any other purpose than collecting an unpaid debt, his argument still fails. The Court of Appeals has held that in abuse of process cases, "there is no liability where the defendant has done no more than carry out the process to its authorized conclusion, *even with bad intentions*." *Berman v. Karvounis,* 308 Md. 259, 265 (1987) (emphasis added). As such, his claim for abuse of process would have failed then, and must still fail now.

Furthermore, "[w]e note . . . that the injuries contemplated by this tort (and an indispensable element of it) are limited to an improper arrest of the person or an improper seizure of his property." *Herring*, 21 Md. App. at 536. Even if appellant did supply any factual support to satisfy the three elements of an abuse of process claim, the record does not show, and appellant does not allege, that he suffered any such injury.

To recap, we hold that, while the trial judge ideally should have allowed appellant to provide his written response to appellees' motion for partial summary judgment as to Count IV, appellant suffered no prejudice as a result of his decision to do otherwise.

Appellant remains to this day unable to support a claim for either cause of action, and thus, this claim fails.

II. THE DISQUALIFICATION OF COUNSEL/AMENDED ANSWER CLAIM

A. Parties' Contentions

Appellant contends that the trial court erred in disqualifying Mr. Brown and then subsequently striking Mr. Brown as a party. He argues that appellees waived their right to move for Mr. Brown's disqualification by waiting until two months before the pretrial hearing. Appellant further suggests this was a "misuse of the Rules of Professional Conduct for tactical gain," because when Judge Rubin granted the motion and allowed Mr. Brown to file a proposed amended complaint along with his motion to intervene, it had the effect of allowing appellees to file their amended answer, which Judge Rubin previously did not allow. He maintains that the trial court should have rather only considered the original answer, which resulted in a constructive admission regarding the interpleader count. Appellant sums up his argument as follows:

> Thus, the combination of the erroneous granting of the Defendants' untimely Motion to Disqualify, with the procedural hoops and trial continuance that ensued, coupled with the Court's allowance of the Amended Answer, resulted in prejudicial harm to Plaintiff. Plaintiff opposed the Defendants' second attempt to amend their Answer, as the continuance of trial should not have served as a "get out of jail free card." Md. Rule 2-341(a) is crystal clear that any amended pleading, even one filed more than 30 days prior to trial, may be stricken for cause.

He concludes by arguing that the trial court erred in striking his motion to intervene and accompanying proposed amended complaint because "such intervention was a matter of right pursuant to Md. Rule 2-214."

Appellees first respond that the timing of the motion to disqualify is insignificant because of the holding in the companion case, wherein we held that Mr. Brown's "substantive centrality to the issues in the case" vitiated any timeliness concerns. *Abrishamian*, 216 Md. App. at 407-08. They argue that appellant is "crying victim to the consequences of his own litigation choices," because it was his choice to attempt to intervene as a plaintiff, which resulted in a continuance of the trial and additional time for them to file an amended answer pursuant to Md. Rule 2-341(a).

B. Standard of Review

As we have previously held, we review a trial court's decision to disqualify counsel only for an abuse of discretion:

> Consequently, appellate review of the granting of a motion for disqualification necessitates a multi-step inquiry. The factual findings of the court regarding the violation will be reviewed under the "clearly erroneous" standard. The court's conclusion that an ethical violation occurred is a legal conclusion subject to full appellate review. Finally, the court's discretionary choice of disqualification as a sanction is reviewed only for an abuse of that discretion.

Klupt v. Krongard, 126 Md. App. 179, 204 (1999) (internal quotations and citations omitted).

C. Discussion

We again need not dwell long on this discussion, as we have already dealt with this exact situation – quite literally – in the companion case. *See Abrishamian*, 216 Md. App. at 406-08. We decline to revisit the issue in any considerable detail, but we again hold that Judge Rubin did not err in disqualifying Mr. Brown in this case either. As we said before,

"Mr. Brown's substantive centrality to the issues in the case should have compelled him to back out at the beginning, and the timing of the Motion to Disqualify doesn't really matter." *Id*. at 407-08.

Judge Rubin's decision to deny the motion to strike appellee's amended answer, however, is a new issue, so we will address that matter. In his decision to deny appellees' original motion to file an amended answer, of paramount importance to the trial court was the potential prejudice that would have been caused to appellant and the remaining interpleader parties:

> THE COURT: . . . We can and should adhere literally to the precise rubric of the rules, which is going to cause me to deny your motion to amend because it comes too late, there's prejudice, there's prejudice to existing parties, and there's prejudice to the [appellant] and there's unnecessary confusion of the issues, and you all waiting too damn long, to be blunt, for no reason.

The amendment of pleadings is governed by Md. Rule 2-341, which provides, in pertinent part:

> **(a) Without Leave of Court.** *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. . . . If an amendment introduces new facts or varies the case in a material respect, an adverse party who wishes to contest new facts or allegations shall file a new or additional answer to the amendment within the time remaining to answer the original pleading or within 15 days after service of the amendment, whichever is later.* If no new or additional answer is filed within the time allowed, the answer previously filed shall be treated as the answer to the amendment.
>
> **(b) With Leave of Court.** *A party may file an amendment to a pleading after the dates set forth in section (a) of this Rule only with leave of court.* If the amendment introduces new facts or varies the case in a material respect, the new facts or allegations shall be treated as having been denied by the adverse

> party. The court shall not grant a continuance or mistrial unless the ends of justice so require.
>
> **(c) Scope.** *An amendment may seek to . . . change the nature of the action or defense* . . . [or] make any other appropriate change. *Amendments shall be freely allowed when justice so permits.* Errors or defects in a pleading not corrected by an amendment shall be disregarded unless they affect the substantial rights of the parties.

Md. Rule 2-341(a)-(c) (emphasis added). Thus, based on the expected timeline of events at that hearing, it cannot be said that Judge Rubin improperly exercised his discretion in denying appellees' original motion to amend. That hearing took place on August 26, 2011, and with the trial expected to begin at that point on September 12, 2011, the potential for prejudice to appellant was clear.

Unfortunately for appellant, it was his decision to file a motion to intervene in the case in an attempt to circumvent the trial court's decision to grant the motion to disqualify, and, as we discussed *supra*, the trial court's decision was proper. Had he instead accepted the decision, the trial court would not have needed to grant a continuance, which ultimately set back the trial date over six months. As a result, it was clearly within appellees' rights to file their amended answer, pursuant to Rule 2-341(a), and change the nature of their defense, pursuant to Rule 2-341(c). The trial court did not commit an abuse of discretion by allowing the amended answer to be filed.

III. THE INTERPLEADER CLAIM

A. Parties' Contentions

Appellant steadfastly maintains that Judge Rubin erred in awarding appellees 50% of the funds he entered into the court registry. He first argues that appellees were not

entitled to the funds, because Dr. Macedo refused to testify at the car accident tort case, thereby denying appellant the opportunity to enter the medical bills incurred in Dr. Macedo's treatment into evidence to present to the jury. He then argues that the trial court "apparently erroneously relied upon its belief that [a]nswers were required from other potential distributees." He believes that Md. Rule 2-221 does not require an answer from the parties, only the *opportunity* to respond to the claim, and therefore, because the three other named parties (the doctors) apparently agreed to a pro rata share, they should have been the only parties included in the distribution. In the alternative, appellant believes that, if an answer was required under the Rules, an "arbitrary 50/50 split" between Dr. Wells and appellees was still incorrect, as Dr. Wells was owed more than appellees were. As with the rest of allegations of error in this case, appellant reiterates his belief that, above all, appellees' alleged fraud and "unclean hands" should have precluded any recovery in this case anyway.

Appellees counter by saying that the language of the A&A only required appellant to pay any medical expenses out of the car accident tort case, and did not require any bills to be admitted at trial, let alone require any testimony in any suit. Appellees also argue that their appearance was not a result of a decision to intervene in the case, rather it was a result of appellant's decision to name them in the interpleader suit. Appellees believe that the trial court's decision to split the proceeds evenly was not error, as Dr. Wells was the only other defendant to respond, and did not present any evidence in support of such a claim. They conclude by arguing that the doctrine of unclean hands is inapposite to this case and

is merely employed by appellant in a "final effort to have his litigation opponent sanctioned."

B. Standard of Review

The parties agree that the trial court's resolution of this matter should be examined under the abuse of discretion standard. Given the equitable (and relatively unique) posture of the claim, we see no reason to disagree. In such equitable actions:

> We review the trial court's decision for an abuse of discretion and unless the court acts arbitrarily in the exercise of that discretion, its action will not be reviewed on appeal. We will reverse the circuit court only in exceptional instances where there was prejudicial error. An abuse of discretion occurs where no reasonable person would take the view adopted by the court or if the court acts without reference to any guiding rules or principles.

Serio v. Baystate Properties, LLC, 209 Md. App. 545, 554 (2013) (internal quotations and citations omitted).

C. Discussion

The way appellant chose to word this alleged error is perplexing—to say the least—and the issue itself is, on its face, bizarre. It does not appear that appellant is truly challenging Judge Rubin's decision to deny his "motion for order specifying issues not in dispute," but is instead challenging his decision to award appellees any amount of money in the first place. Given the fact that it was appellant himself that chose to specifically include appellees as "claimant-defendants" in Count I of his complaint, we see no merit to this contention, whatsoever.

Maryland's rule governing interpleader actions provides, in part, that "[a]n action for interpleader or in the nature of interpleader may be brought against two or more adverse claimants who claim or may claim to be entitled to property." Md. Rule 2-221(a). In general, the difference between "an action for interpleader" and "an action in the nature of interpleader" is that the former requires a completely disinterested plaintiff, while in the latter, the plaintiff may claim a portion of the amount in dispute. *See John Hancock Mutual Life Ins. Co. v. Kegan*, 22 F. Supp. 326, 329 (D. Md. 1938). Rule 2-221 goes on to say that the judge may enter an appropriate order "[a]fter the defendants have had an opportunity to answer the complaint and oppose the request for interpleader." Md. Rule 2-221(b). One such order may be to "direct the distribution of any part of the property not in dispute." Md. Rule 2-221(b)(7).

In *Faulkner v. American Casualty Co. of Reading, Pa.*, 85 Md. App. 595, 623 (1991), this Court explained that:

> The purpose of an interpleader action is to protect a stakeholder who is "threatened with double vexation in respect to one liability." *Rockwell v. Carroll Ptg. & Pub. Co.,* 191 Md. 542, 547, 62 A.2d 545 (1948). A decree cannot be entered in an interpleader action until all of the defendants have had an opportunity to answer or contest the interpleader complaint. *Id.; Miller v. Mass. Mutual Life Ins. Co.,* 183 Md. 19, 34, 36 A.2d 517 (1944). Once the defendants have had such an opportunity, Md. Rule 2–221(b) empowers the court to require the defendants to interplead as to the disputed property within a certain time period and to enjoin the original defendants from bringing or prosecuting any other action affecting the property.

Here, the trial judge did just that: directed the distribution of the funds entered into the court registry to the claimant-defendants, as requested by appellant, after allowing

ample time for each claimant-defendant to answer. If appellant did not want the trial court to distribute any of those funds to the appellees, he should not have named them with the rest of the doctors as "claimant-defendants." If the interpleader action was a "pure" interpleader, as appellant claimed it was, and it was truly to "enjoin[] any potential claimant to the subject property from instituting any . . . legal . . . action against" him, as Count I of the complaint says it was, he has enjoyed the benefit of the action. He cannot have it both ways. It is logically indefensible to claim otherwise.

We see no error in the way the trial court ultimately distributed the funds, either. In *Lawhorne v. Employers Insurance Co. of Wausau*, 343 Md. 111, 113 (1996), the Court of Appeals was asked to review "an interpleader action brought by an automobile liability insurer faced with multiple claims against an insured that exceeded the limits of the insured's coverage." The Court explicitly held that, while it was not an interpleader action in the traditional sense, "pie-slicing" adversity is recognized in Maryland interpleader actions. *Id*. at 122.

While *Lawhorne* is factually distinct, we are confident that its holding controls here. Judge Rubin was under no obligation to include the other two doctors in the distribution, as they chose not to answer and be parties to the interpleader. Clearly, the likely cost of litigation in pursuing the money outweighed their desire to be one of four parties that would collect only a piece of $5,174.65. Moreover, it was appellant's decision to try to intervene in the case as a party that set the trial date back and enabled appellees to file their amended answer, thus obviating appellees' previous alleged "constructive" admissions.

Because the only two answering claimants, appellees and Dr. Wells, both had outstanding balances greater than the amount in question, the trial judge split the amount in half and divided it equally between them. In a proverbial "cake and eat it too" situation, appellant sought an equitable remedy and asked the court to distribute money to potential claimants to avoid any possible future liability, which the court then did, but now appeals because it was not in the manner he wished. It was appellant who essentially admitted that appellees had a potential claim to that money by naming them as "*claimant*-defendants," and he now must live with that decision.

CONCLUSION

As Judge Nazarian, speaking for this Court, succinctly severed the Gordian knot in the companion case: "After sifting through the rhetoric and overstated allegations of fraud, we find no errors." *Abrishamian*, 216 Md. App. at 402. We too find no reason to disturb the decisions of the trial court. Appellant suffered no prejudice in the trial court's decision to grant summary judgment ruling for Count IV before he could file a written response, and the trial court did not abuse its discretion in the disqualification of counsel issue or the distribution of the interpleader funds.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.