UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3087

September Term, 2010

ROGER B. HARGRAVE

v.

DAVID J. SCHRETLIN, Ph.D.

Eyler, Deborah S.,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: January 27, 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.

The appellant in this case is Roger B. Hargrave ("Hargrave") who, in 2005, was married to Yvette Cade. On October 10, 2005, Hargrave went into a store, located in Clinton, Maryland, where his wife worked, doused his wife with gasoline that he had brought to the store in a soda bottle, and then chased his wife out into the parking lot where he struck a match and set her on fire. Ms. Cade ran back into the store while engulfed in flames. Hargrave's conduct was captured on the store's video camera and was witnessed by numerous persons. Ms. Cade was horribly disfigured as a result of her husband's actions.

Due to the nature of the injuries suffered by Ms. Cade, coupled with the fact that shortly before the incident a Prince George's County District Court Judge had denied Ms. Cade's request for a protective order against her husband, Hargrave's crimes resulted in massive television and newspaper coverage in the Washington Metropolitan area.

On November 11, 2005, Hargrave was charged with attempted first-degree murder and one count of second-degree attempted murder of his wife together with one count of first-degree assault.

In April 2006, Hargrave was tried before a jury in the Circuit Court for Prince George's County and convicted of attempted first-degree murder and first-degree assault. On June 2, 2006, the trial judge sentenced Hargrave to life imprisonment. Hargrave filed a timely appeal but the judgments of conviction were affirmed.

On August 8, 2008, Hargrave, *pro se*, filed a complaint in the Circuit Court for Prince George's County, in which he named Dr. David J. Schretlin[1] as the sole defendant. Not counting Hargrave's signature on the complaint, and the caption, the complaint read, in its entirety, as follows:

> COMES NOW the Plaintiff, Roger B. Hargrave[,] [*pro se*], sues the Defendant, David J. Schretlin, Ph.D., and for cause states as follows:
>
> PARTIES
>
> 1. The Plaintiff is an adult male, Afro-American, who was convicted of attempted first and second degree murder and first degree assault in connection with an incident in which his ex-wife was set on fire on 10/10/05.
>
> 2. The Defendant is a psychologist who was refer[r]ed by the Public Defender[']s Office to complete a neuropsychological examination prior to the Plaintiff's trial date of 4/24/06.
>
> 3. The Plaintiff met with the Defendant on 12/3/05 and completed all test[s] but the P.I.A. test.
>
> 4. The Defendant told the Plaintiff that he would only submit his report if it was favorable to the Plaintiff, for the trial. However, the report was not submitted in time for the Plaintiff to have a jury consider his intent which was an issue at his trial, as well as his mental state.

[1] The doctor's name in both the lower court case and a prior case in this Court has been spelled as "Schretlin," though it appears from his neuropsychological report, included in both appellant's and appellee's briefs, that his actual name is "Schretlen." For the sake of continuity we will continue to use "Schretlin."

5. On 5/30/06 the Defendant faxed a copy of his report to public defender, Gary V. Ward[,] who in turn provided copies to the State[']s Attorn[ey']s Office and to the sentencing judge, William D. Missouri.

COUNT I - GROSS NEGLIGENCE

6. The Plaintiff elected to have a trial by jury whom [sic] were to be the trier of fact. The Defendant[']s report contained favorable information to negate a specific intent to be convicted of 1st degree attempted murder, and at the least be convicted of 1st degree assault. However[,] the Defendant did not complete the report until 5/28/06. Subsequently this left things in the judge[']s hand[s], whom [sic] sentence[d] the Plaintiff to life in prison.

7. Such conduct by the Defendant is beyond the bounds of professionalism and constitute compensation [sic] for Gross Negligence.

WHEREFORE, the Plaintiff demands judg[]ment against the Defendant in the amount of $250,000.00 for both compensatory and punitive damages.

Contemporaneously with the filing of his complaint, Hargrave filed a motion to waive costs. That motion was denied by the court because, in the circuit court's words, "[t]he complaint does not state a claim for which relief can be granted." Hargrave did not pay the necessary filing costs and, as a consequence, on January 16, 2009, the circuit court ordered that the case "be DISMISSED without prejudice" and "that this matter is hereby CLOSED STATISTICALLY."

Hargrave filed an appeal to this Court and, in an unreported opinion, a panel of this Court vacated the judgment denying Hargrave's motion to waive costs and remanded the matter to the circuit court for further consideration. *Hargrave v. Schretlin*, No. 2685,

September Term, 2008 (filed May 24, 2010). In an opinion written by the Honorable Irma Raker, the panel pointed out that the test to be utilized in determining whether costs should be waived was whether the plaintiff's case is "frivolous" and not whether the complaint "fail[ed] to state a claim for which relief can be granted[.]" *Id* at 7-9. On remand, the circuit court was instructed to determine whether Hargrave's case was "frivolous." *Id*. at 9-10.

Upon remand, the same judge who had denied Hargrave's motion to waive costs initially, reconsidered the matter. On September 7, 2010, the judge signed an order, which was entered on September 9, 2010, that read, in material part, as follows:

> The plaintiff filed a petition to waive the prepayment [of court fees], which was denied by the Court because "the complaint does not state a claim for which relief can be granted." The matter was remanded by the Court of Special Appeals for the Court to make the appropriate inquiry under Md. Rule 1-325.
>
> Having conducted that inquiry, the Court finds that the claim is frivolous in that it has no legal basis.
>
> Accordingly, it is hereby ordered this 7th day of September[,] 2010[,] that the motion to waive the prepayment of court costs is **DENIED** without a hearing.

Hargrave, *pro se*, filed a second appeal to this Court in which he raises one question, phrased as follows:

> Did the lower court clearly abuse its discretion when it concluded the appellant[']s complaint [was] frivolous?

For reasons set forth below, we shall answer that question in the negative and affirm the judgment of the Circuit Court for Prince George's County.

I.
DISCUSSION

Maryland Rule 1-325(a) reads, in material part, as follows:

> A person unable by reason of poverty to pay any filing fee or other court costs ordinarily required to be prepaid may file a request for an order waiving the prepayment of those costs. The person shall file with the request an affidavit verifying the facts set forth in that person's pleading . . . stating the grounds for entitlement to the waiver. . . . If the court is satisfied that the person is unable by reason of poverty to pay the filing fee or other court costs ordinarily required to be prepaid and the claim . . . is not frivolous, it shall waive by order the prepayment of such costs.

Hargrave filed an affidavit adequately showing that due to poverty he was unable to prepay the required court fees.

One of the purposes of requiring a litigant to prepay filing fees is to discourage frivolous litigation. *Glanville v. David Hairstylist*, 249 Md. 162, 166 (1968). As a consequence, when a civil litigant files a petition requesting that fees be waived, the circuit court must make a "determination of whether or not the case is frivolous," and, if the petition is denied, state the reasons for doing so. *Davis v. Mills*, 129 Md. App. 675, 680-81 (2000). The requirement, however, that the court must state its reasons for denying an application for a waiver is not an onerous one. As we said in *Torbit v. State*, 102 Md. App. 530, 537 (1994): "[a] lengthy statement is not necessary; a brief, one line notation, such as 'affidavit does not show that applicant is indigent,' or 'complaint is patently meritless [or frivolous]' will normally suffice." "The grant or denial of the waiver application is vested within the

sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion." *Davis*, *supra*, 129 Md. App. at 679.

A "ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling." *Nash v. State*, 439 Md. 53, 67, *cert. denied*, 135 S. Ct. 284 (2014) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)) (quotation marks omitted). Rather, we reverse only when the circuit court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Nash*, 439 Md. at 67 (quoting *Gray v. State*, 388 Md. 366, 383 (2005)) (quotation marks omitted).

Black's Law Dictionary defines a frivolous claim as "[a] claim that has no legal basis or merit, esp. one brought for unreasonable purposes such as harassment." *Black's Law Dictionary* 282 (5th ed. 2009).

In the subject case, the circuit court found appellant's complaint to be frivolous because it had "no legal basis." Reduced to its essentials, Hargrave's complaint made the following substantive allegations: 1) Hargrave was convicted of first-degree attempted murder and first-degree assault as a result of "an incident in which [Hargrave's] ex-wife was set on fire on 10/10/05"; 2) Dr. Schretlin, a neuropsychologist, was retained by the public defender's office to perform a neuropsychological examination of Hargrave prior to Hargrave's April 24, 2006 trial date; 3) Hargrave met with defendant on December 3, 2005 and on that date completed all tests except one; 4) Dr. Schretlin told Hargrave, at some

unspecified time, that he would only submit his report for trial, if it was favorable to [Hargrave]; 5) Dr. Schretlin's report was not completed until May 28, 2006, which meant that it was not submitted "in time for . . . a jury" [in Hargrave's criminal trial] to consider it; 6) at issue at the criminal trial was Hargrave's intent "as well as his mental state"; 7) Dr. Schretlin faxed a copy of his report to Hargrave's public defender on May 30, 2006; 8) the report was provided by Hargrave's public defender to the State's Attorney and the judge who sentenced Hargrave; and, 9) the report submitted by Dr. Schretlin "contained favorable information" to negate the specific intent that was necessary for the State to prove in order to secure a conviction for first-degree attempted murder.

Although Hargrave does not say so explicitly, he implies in his complaint, that if the report had been timely produced, then the public defender would have used Dr. Schretlin's testimony at trial to convince the jury to convict him of something less than attempted first-degree murder. But nowhere in Hargrave's complaint does he either specifically allege, or even imply, that Dr. Schretlin ever agreed to be a witness at his trial nor does Hargrave allege that his attorney even wanted Dr. Schretlin to testify at trial.[2] And the report itself,

[2] When the circuit court considered Hargrave's request for a waiver of fees, it was not given a copy of Dr. Schretlin's report but, in an appendix to appellant's opening brief, he submits for our consideration a copy of that report. A reading of the report makes it crystal clear why Hargrave's public defender would not have wanted Dr. Schretlin to testify. Contrary to the allegations in Hargrave's complaint, that report did not negate the intent element necessary to prove an attempt to commit first-degree murder or first-degree assault. Dr. Schretlin, in his report, opined that when the crime was committed Hargrave: 1) "almost

(continued...)

no matter what opinions Dr. Schretlin expressed in that report and no matter when it was produced, plainly could not have been admitted at trial because to admit it would have violated Maryland's rule against hearsay. *See* Md. Rule 5-802 ("[e]xcept as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible"). No exception to the hearsay rule would even arguably have allowed Hargrave's attorney to enter into evidence Dr. Schretlin's report. Thus, the motions judge was correct when she found that Hargrave's complaint was frivolous inasmuch as the complaint, on its face, had "no legal basis."

Hargrave, in his opening and reply brief, makes an attempt to show that his complaint against Dr. Schretlin did have a "legal basis." But his arguments in that regard all rely on allegations of facts that are not in the complaint and thus were not before the circuit court. For instance, Hargrave asserts that Dr. Schretlin "after knowing when the trial would begin,

[2](...continued)
certainly realized that it was wrong and criminal to assault his wife the way he did"; 2) "does not appear to have a cognitive disorder"; and 3) "knew it was wrong and criminal to assault his wife." If that report had been considered it would have helped the State prove that Hargrave, in Dr. Schretlin's opinion, did have the requisite intent to commit the crimes for which he was convicted.

For sentencing purposes, the report contained information that, arguably at least, might be helpful. Dr. Schretlin said, based on the history he received from Hargrave, that Hargrave was "intoxicated" when the crime was committed and was also "depressed" and "consumed by jealous rage."

or being informed by [a]ppellant[']s trial counsel of the date [a]ppellant[']s trial was to begin[,] his action, or lack thereof[,] became grossly negligent . . . ."

In his brief, rather than focusing on the issue of whether his complaint, as written, had a legal basis, Hargrave maintains that we should reverse the circuit court's decision because the motion's judge failed to help him write a complaint that would have a legal basis. His argument in this regard is as follows:

> In essence, when the Honorable Judge Maureen Lamasney determined the matter frivolous, it can be viewed as a rush to judgment, without careful consideration of the well pleaded facts, given the outcome of Appellants trial. Nor did she specify where his complaint fell short to give him the opportunity to amend it, to plead a legally sufficient cause of action if that were the case (ie. change Gross Negligence to Negligence). *See Davis v. Dipino*, 337[] Md. 642 (1995) thus demonstrating a clear abuse of discretion on the lower court[']s part.

There is no merit in this argument. First, because there were so few "well[-]pleaded facts" alleged, the court would have had to engage in highly speculative guesswork to conclude that Hargrave somehow might be able to amend the complaint so as to allege a viable tort action. Such guesswork is not permitted when considering a Rule 1-325(a) motion. Secondly, although a circuit court judge has many responsibilities, one of those responsibilities is not to give legal advice to *pro se* civil litigants.[3]

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[3] Accurate legal advice in this case would be impossible for the court to provide because the court would have no way of knowing what additional facts Hargrave could truthfully allege so as to state a cause of action. *See* n.2, *supra*. Moreover, at no time did appellant seek leave to amend his complaint.

For the reasons set forth above, we hold that the circuit court did not abuse its very broad discretion in determining that the complaint filed by Hargrave against Dr. Schretlin had no legal basis and was therefore frivolous.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.