

Circuit Court of Prince George's County
Case No. CAL13-14709

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1038

September Term, 2016

JOSEPH C. RUDDY, JR.

v.

ROMMELL G. HOLLINS, SR.

Eyler, Deborah S.
Leahy,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: October 4, 2017

*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.

Appellant, Joseph C. Ruddy, Jr., Esq., complains that the Circuit Court for Prince George’s County denied wrongly his Motion for a Partial New Trial or a Complete New Trial, which motion was based upon a jury verdict that, to his mind, was irreconcilably inconsistent. Appellant appears to base his arguments on the premise that the evidence presented to the jury was inadequate to support the verdict against him on his opponent’s counter-claim for breach of contract. Appellant alleges that the asserted irreconcilable inconsistency is evident from the jury’s indication on a Special Verdict Form that Appellant breached the contract¹ with his former client, Appellee, Rommell G. Hollins, Sr., while finding also that Appellee breached the same contract.

As the result of a jury trial on 23 February 2016, the jury awarded Appellant \$138,763.91 for unpaid legal fees and awarded Appellee \$205,000.00 for Appellant’s breach of the same agreement to provide legal services to Appellee. On 10 March 2016, Appellant filed a motion for a Partial New Trial, which Appellee opposed. A hearing was held on 9 June 2016, at the end of which the trial judge took the matter under advisement. Appellant filed a Supplement to the Motion seeking alternatively an entirely New Trial. The judge denied the revised motion in a Memorandum Opinion and Order docketed on 16 June 2016.

¹ The relevant contract, a written legal services retainer agreement, provided for Appellant to provide legal representation of Appellee in connection with Appellee’s claim of a one-half ownership in a rental property (titled solely in Appellant’s brother’s (Rodney G. Hollins, Sr.) name) located at 632 Girard Street, N.E. Washington, D.C. (the “Real Property”).

Appellant filed this timely appeal. He poses the following query for our consideration:

Did the trial court err by denying [Appellant’s] Motion for a Partial New Trial or Supplement for Total New Trial based upon a verdict that constituted an irreconcilably inconsistent jury verdict because the jury in answer to question in a special verdict form required a verdict in favor of [Appellant’s] claim of breach of contract, and in answer to other questions required a verdict in favor of [Appellee’s] counter-claim for breach of the same contract?

Appellee filed a Motion to Dismiss the appeal for Appellant’s failure to order and file the complete trial transcript in the record, as required by Maryland Rule 8-411. On the merits, Appellee argues that the jury verdict was consistent, based on evidence presented to the jury that the value of the building in dispute in the D.C. litigation was \$600,000.00, with his interest being one-half. He posited then that the jury could have found Appellee’s loss in the ultimately failed D.C. litigation was \$200,000.00, after deducting from the \$300,000.00 interest a one-third legal contingency fee, assuming Appellee shall have prevailed in the D.C. litigation.²

We decline to address Appellant’s argument that the jury verdict was irreconcilably inconsistent because we grant Appellee’s Motion to Dismiss. We explain.

Statement of Facts

On 16 July 2002, Appellant entered in Prince George’s County (where Appellant maintains his primary law office and Appellee resides; also Appellant is admitted to

² No one offers a cogent explanation for how the jury got from \$200,000.00 to \$205,000.00 based on the evidence.

practice law in Maryland and the District of Columbia) two retainer agreements with Appellee regarding legal matters in the District of Columbia. One retainer agreement was for representation in a probate case in the Superior Court for the District of Columbia in which Appellee wished to remove his brother, Rodney, as the personal representative of their late father's estate ("Probate Case"). The other retainer agreement undertook "to represent [Appellee] to prov[e] through [d]emand [c]orrespondence and/or [l]itigation [] his [d]e [f]acto [o]wnership of the [c]ommercial [r]ental [p]roperty at 633 Gerard Street, N.E., Washington, D.C., and any other activities inclusive thereof, or related thereto." Both agreements provided for an hourly-rate-driven fee to be paid. The Probate Case agreement provided that Appellee is to agree to "pay a [r]etainer [f]ee of [s]ixteen [h]undred . . . [d]ollars or [o]ne [h]undred and [s]ixty [d]ollars per hour for time expended, whichever is greater." The original Litigation Case agreement provided likewise as to its fee arrangement.

On 3 February 2006, the Probate Division of the Superior Court denied Appellee's request to remove Rodney as the personal representative of their father's estate, based upon the court's finding that Appellee's testimony was not credible. The Litigation Case, as we shall recount, traveled a more labored travail.

After the unfavorable conclusion of the Probate Case, Appellee ceased making payments to Appellant for then-accrued, but unpaid, legal fees and costs. Appellant communicated to Appellee that his representation in the Litigation Case would not continue unless Appellee signed a revised retainer agreement in that matter that

incorporated the original hourly fee structure, but added a contingency fee of one-third of the value of any monies, compensation, or property recovered in the Litigation Case, whichever amount was greater. Appellee signed the revised retainer agreement on 14 April 2008. The matter was set for trial in the Superior Court on 21 April 2008. A mistrial resulted. A second trial took place on 6 October 2008. The jury determined a joint ownership interest existed in the Real Property in favor of Appellee.³ The basis for the jury’s verdict was that Rodney breached an oral contract with Appellee for joint ownership of the rental property. Moreover, the jury concluded that Rodney converted unlawfully a joint-ownership right in the rental property income since February 2002.⁴

³ Appellee’s putative one-half interest in the Real Property was not confirmed, however, until 31 December 2009, when a judge of the Superior Court granted his motion for relief requesting a half ownership interest in the property.

⁴ Appellant sought relief from Rodney in the amount of “[e]ight [h]undred [t]housand . . . [d]ollars in [c]ompensatory [d]amages, [t]hree [m]illion . . . in [p]unitive [d]amages, [r]easonable [a]ttorneys [f]ees, and the [c]osts of these [p]roceedings.” The Superior Court found a joint ownership interest for Appellee in the Real Property rental income and awarded him \$2,500 in damages.

Appellee continued to refuse to pay Appellant’s outstanding attorney fees and costs. On 25 March 2011, Appellee terminated⁵ Appellant as his counsel.⁶ On 24 May

⁵ Appellee pleaded in his counter-complaint in the circuit court that he terminated Appellant because Appellant “grossly overbilled” Appellee, “[Appellant] failed to provide [Appellee] with invoices detailing the services allegedly provided by [Appellant],” and Appellant “failed to plead and request the appropriate relief in the Bill of Complaint.” Appellant sent to Appellee on 30 April 2011, a billing statement claiming Appellant’s total unpaid fees, as of 31 March 2011, to be \$138,763.91, based on the hourly rate provision of the retainer agreements.

⁶ Appellee retained a successor attorney, who represented him in the D.C. litigation for more than three years. After a rather extensive up-and-down history with the D.C. courts (trial and appellate), the result was that, on 23 September 2014, the award to Appellee of a one-half ownership in the Real Property was reversed. The following aspires to provide a sense of how that outcome occurred:

In response to Rodney’s appeal and motion for relief from judgment, the D.C. Court of Appeals, on 23 August 2012, held that the deference a prior reviewing judge gave the 6 October 2008 ruling granting a one-half interest in the Real Property to Appellee was “inadequate as an explanation of the denial of [Rodney’s] motion [for relief from judgment][.] It does not address all the factors that must guide the disposition of a Rule 60(b) motion or provide any analysis as to why the facts of this case do not justify granting relief to [Rodney].” Without such [consideration], ‘the ruling constitutes an abuse of discretion.’” The court reversed the lower court’s denial of Rodney’s motion for relief and remanded the case to make “findings with regard to excusable neglect.” On remand, the Superior Court granted Rodney’s Rule 60(b) motion for relief from the earlier ruling in response to Appellant’s Rule 60 (b) motion granting him a half-interest in the Real Property.

Appellee appealed that ruling. The D.C. Court of Appeals affirmed its prior judgment granting Rodney’s motion for relief from the 6 October 2008 ruling because Appellee failed to meet his burden under the Superior Court Civil Rule 60(b) stating “on motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceedings . . . [for] any other reason justifying relief from the operation of judgment.” The appellate court held that the judge reviewing the 6 October 2008 ruling did not abuse his discretion in finding that Appellee did not meet his burden under Rule 60 (b). He was unable to show that he would suffer an extreme and undue hardship if he was not granted declaratory relief i.e., relief from judgment. Thus, his claim for a one-half ownership interest in the Real Property was rejected.

2013, Appellant filed a complaint in the Circuit Court for Prince George’s County for breach of the retainer agreements, e.g., the nonpayment of legal fees in the Probate and Litigation Cases. Appellee counterclaimed for breach of contract regarding the retainer agreements and for legal malpractice in the Probate and Litigation Cases, and tortious breach of contract for the loss of his one-half Real Property interest in the Litigation Case. Trial commenced on 23 February 2016. It has been suggested to us that evidence was presented establishing the value of the Real Property to be \$600,000.00, for which Appellee’s one-half interest would have been \$300,000.00 (neither party contests this). Further, evidence showed reportedly the outstanding balance claimed as due to Appellant for unpaid legal fees (based on the hourly rate) to be \$138,763.91.

At the close of the evidence, Appellant did not move for judgment on his breach of contract claim or Appellee’s counterclaims.⁷ The parties approved a verdict sheet to be

⁷ Although we grant Appellee’s motion to dismiss, it is worth noting a consequence of Appellant’s failure to move for judgment at the close of the evidence. Appellant has made much on appeal of the asserted insufficiency of evidence presented at trial to support the jury verdict awarding Appellee \$205,000.00 in compensatory damages on Appellee’s breach of contract counter-claim.

Maryland appellate courts will “not review a challenge to the sufficiency of the evidence where there is a failure to move for judgment at the conclusion of all the evidence.” *Mathis v. Hargrove*, 166 Md. App. 286, 311, 888 A.2d 377, 392 (2005) (citing *Webb v. Oxley*, 226 Md. 339, 347, 173 A.2d 358 (1961); *Bugg v. Trustees of Cokesbury Baptist Church*, 252 Md. 59, 60, 248 A.2d 879 (1969)).

The circuit court judge here noted in his Memorandum Opinion and Order of Court:

Plaintiff failed to move for judgment at the conclusion of the case and is now precluded from challenging the sufficiency of the evidence to support the [Appellee’s] counterclaim, and the weight to be afforded that

(Continued...)

presented to the jury. The jury returned that Special Verdict Form containing its answers to thirteen questions, as follows in pertinent part:

Plaintiff's Complaint

1. Did [Appellant] prove by a preponderance of the evidence that [Appellee] breached the contract to pay [Appellant's] legal fees and expenses? – *Yes*
IF YOU ANSWERED “YES” GO ON QUESTION NO. 2. IF YOU ANSWERED “NO,” GO TO QUESTION NO. 3.
2. What amount of money do you award [Appellant] for compensatory damages due to [Appellee's] breach of the contract to pay [Appellant's] legal fees and expenses? – ***\$138,763.91*** (CONTINUE TO QUESTION NO. 3)

Defendant's Counter-Complaint

3. Did [Appellee] prove by a preponderance of the evidence that [Appellant] breached the contract to provide legal services to [Appellee] in the Probate Case? – *No*
IF YOU ANSWERED “YES” GO ON QUESTION NO. 4. IF YOU ANSWERED “NO,” GO TO QUESTION NO. 5.
4. What amount of money do you award [Appellee] for compensatory damages due to [Appellant's] breach of the contract to provide legal services to [Appellee] in the Probate case? – *N/A* (CONTINUE TO QUESTION NO. 5)
5. Did [Appellee] prove by a preponderance of the evidence that [Appellant] breached the contract to provide legal services to [Appellee] in the Litigation Case? – *Yes*
IF YOU ANSWERED “YES” GO ON QUESTION NO. 6. IF YOU ANSWERED “NO,” GO TO QUESTION NO. 7.
6. What amount of money do you award [Appellee] for compensatory damages due to [Appellant's] breach of the contract to provide legal services to [Appellee] in the Litigation Case? – ***\$205,000.00*** (CONTINUE TO QUESTION NO. 7)

(...continued)

evidence is a question for the jury not the Court While a motion for judgment is not a prerequisite to a subsequent motion for a new trial with respect to irreconcilable verdict, it is a prerequisite to a review of the sufficiency of the evidence presented by the [Appellant or Appellee].

Thus, Appellant's failure to move for judgment at the close of the evidence, as a separate ground leading to the outcome here, excuses us from having to consider any of his insufficiency of the evidence arguments.

7. Did [Appellee] prove by a preponderance of the evidence that [Appellant] committed legal malpractice in his representation of [Appellee] in the Probate Case? – *No*

IF YOU ANSWERED “YES” GO ON QUESTION NO. 8. IF YOU ANSWERED “NO,” GO TO QUESTION NO. 9.

8. What amount of money do you award [Appellee] for compensatory damages due to [Appellant’s] legal malpractice in the Probate Case? – *N/A* (CONTINUE TO QUESTION NO. 9)

9. Did [Appellee] prove by a preponderance of the evidence that [Appellant] committed legal malpractice in his representation of [Appellee] in the Litigation Case? – *No*

IF YOU ANSWERED “YES” GO ON QUESTION NO. 10. IF YOU ANSWERED “NO,” GO TO QUESTION NO. 11.

10. What amount of money do you award [Appellee] for compensatory damages for [Appellant’s] legal malpractice in the Litigation Case? – *N/A* (CONTINUE TO QUESTION NO. 11)

11. Did [Appellee] prove by a preponderance of the evidence that [Appellant] breached the original litigation retainer agreement when he required [Appellee] to sign the revised litigation retainer agreement in the Litigation Case? – *No*

IF YOU ANSWERED “YES” GO ON QUESTION NO. 12. IF YOU ANSWERED “NO,” GO TO THE “CONCLUDING INSTRUCTION” BELOW.

12. Did [Appellee] prove by clear and convincing evidence that [Appellant] acted with malice when he required [Appellee] to sign the revised litigation retainer agreement in the litigation case? – *N/A*

IF YOU ANSWERED “YES” GO ON QUESTION NO. 13. IF YOU ANSWERED “NO,” GO TO THE “CONCLUDING INSTRUCTION” BELOW.

13. What amount of money do you award [Appellee] for compensatory damages due to [Appellant’s] malice toward [Appellee] when he required [Appellee] to sign the revised litigation retainer agreement in the Litigation Case? – *N/A* (GO TO CONCLUDING INSTRUCTIONS)

* * *

This appeal asks if the jury’s answers to questions five, six, and nine are irreconcilably inconsistent with its responses to questions one and two.

On 10 March 2016, Appellant filed a Motion for a Partial New Trial asserting that the jury verdict was irreconcilably inconsistent with the evidence presented at trial. Three

months later, Appellant filed a Supplement to the Motion for a Partial New Trial requesting alternatively a Total New Trial. The circuit court issued a Memorandum Opinion and Order on 16 June 2016 denying Appellant’s supplemented motion. The judge did not find the verdict irreconcilable as asserted by Appellant, only somewhat awkward. He explained that:

[Appellant] failed to move for judgment at the conclusion of the case and is now precluded from challenging the sufficiency of the evidence to support Appellee’s counterclaim, and the weight to be afforded that evidence is a question for the jury, not the court While a motion for judgment is not a prerequisite to a subsequent motion for a new trial with respect to irreconcilable verdicts, it is a prerequisite to a review of the sufficiency of the evidence presented by the [Appellant or Appellee] With respect to the damage issue, as the [c]ourt pointed out . . . there was evidence the total building value was \$600,000.00 that the [Appellee’s] interest was one-half, or \$300,000.00 and thus the jury easily could have found that the most [Appellee] could have recovered on the real estate case was \$200,000.00 after deducting the one-third legal fee. There were certainly other issues raised with respect to minor recoveries in the probate and real estate litigation cases that would have assisted the jury in reaching an additional \$5,000.00 in compensation . . . [i]n either event[,] it is independently sustainable.

ANALYSIS

I. Appellee’s Motion to Dismiss this Appeal

a. Appellee’s Argument

Appellee moves to dismiss this appeal because Appellant failed to order and file the complete trial transcripts,⁸ as required by Maryland Rule 8-411(b)(3) (“unless otherwise ordered by the court, the appellant shall order the transcript within . . . ten days

⁸ The only part of the trial proceeding transcribed and filed on appeal by Appellant were the transcript of the post-trial Motion Hearing that took place on 9 June 2016.

after the date the first notice of appeal is filed.”). According to Appellee, this failure “limits [this] Court’s review of Appellant’s [appellate contentions] and Appellee’s reference to the record in support of Appellee’s argument.” Moreover, Appellee contends that Appellant’s minimal effort in constructing a synopsis of the trial proceedings (upon discovering his failure to order the full transcripts) was inadequate. Appellant’s synopsis did not cover all the portions of the trial at issue and, in any event, Appellant failed to include the synopses of the trial court proceedings in the record.

b. Appellant’s Argument

Appellant avers that “[a]n objective review of Rule 8-411(a)(1)(2)(3), establishes that the part of the testimony that is necessary or relevant for the [a]ppeal is what is required to decide the issue(s) on [a]ppeal as opposed to a transcript of all of the testimony at trial.” Hence, inclusion in the record of only the transcript of the post-trial motion hearing was sufficient. Further, Appellant pleads that Appellee did not request inclusion of the full trial transcript. Finally, Appellant denies that Appellee suffered any prejudice as a result of his failure to order and include the full trial transcript.

c. Standard of Review

The resolution of a motion to dismiss raised on appeal is left to the sound discretion of this Court. Md. Rule 8-602; *Boswell v. Boswell*, 118 Md. App. 1, 24, 701 A.2d 1153, 1164 (1997), *aff’d and remanded*, 352 Md. 204, 721 A.2d 662 (1998). Failure to comply with appellate court rules for the filing of the proper record is a ground for dismissal. *Boswell*, 118 Md. App. at 24, 701 A.2d at 1164. We exercise our discretion to

grant Appellee’s motion because we lack in this record the requisite documents necessary to evaluate the merits of Appellant’s appeal.

d. Appellant’s Failure to Order a Full Trial Transcript Prevents Our Ability to Assess the Merits of His Appeal.

As noted earlier, a failure to order and file the trial transcript, as required by Maryland Rule 8-411, can warrant dismissal of an appeal under Maryland Rule 8-602(a)(6).⁹ Appellant’s defense against such an outcome is that he corresponded with Appellee regarding compilation of the record extract, Appellee did not request that the full trial transcript be included in the record extract, and Appellee did not present evidence that the absence of the full trial transcript in the record would prejudice Appellee’s appellate arguments or our appellate review.

Maryland Rule 8-413(a) identifies the required contents and form for a record on appeal, stating in relevant part, “[t]he record on appeal shall include (1) a certified copy of the docket entered in the lower court, (2) the transcript required by *Rule 8-411 . . .*” Md. Rule 8-413 (emphasis added). With regard to the trial transcript, Maryland Rule 8-411 specifies:

⁹ “On motion or on its own initiative, the Court may dismiss an appeal for any of the following reasons . . . the contents of the record do not comply with Rule 8-413.” Md. Rule 8-602(a)(6).

the appellant shall order in writing from the court reporter a transcript containing: (1) a transcription of (A) all the testimony or (B) that part of the testimony that the parties agree, by written stipulation filed with the clerk of the lower court, is necessary for the appeal . . . (2) a transcription of any proceeding relevant to the appeal . . . [and it must be done] ten days after the date the first notice of appeal is filed.

Md. Rule 8-411(a-b). Therefore, Maryland Rule 8-602(a)(6) grants us the discretion to dismiss a case if “the contents of the record do not comply with Rule 8-413.” Md. Rule 8-602; *Brown v. Fraley*, 222 Md. 480, 483, 161 A.2d 128, 130 (1960).

Appellant’s failure to order the trial transcripts represents a significant impediment to our review of the parties’ contentions, but especially his. The issue in this dispute is the basis for the jury verdict awarding compensatory damages to Appellee. To reach the merits of Appellant’s irreconcilably inconsistent verdict arguments, we must consider the grounds with which the jury may have been presented, and on which it relied, in reaching its decision. We are unable to do that without the unavailable trial transcripts.

At oral argument, Appellant spent considerable time arguing that the Special Verdict Form on which the jury answered affirmatively that Appellant did not commit legal malpractice, but concluded that Appellant breached the legal services retainer agreement with Appellee, standing alone demonstrated clear and irreconcilable inconsistency.¹⁰ In support of this argument, Appellant relied heavily on the Court of Appeal’s opinion in *Southern Management Corp. v. Taha*, 378 Md. 461, 488, 836 A.2d

¹⁰ Given the differing elements of a breach of contract claim and one for legal malpractice, it is not at all clear on its face that the verdict here was irreconcilably inconsistent as a matter of law.

627, 643 (2003), where the Court found a verdict that “exonerates an employee for a tort while holding the employer responsible [in tort] on the doctrine of respondeat superior cannot stand.” He relied further on *Carter v. Rogers*, 805 F.2d 1153, 1158 (4th Cir. 1986), where the Fourth Circuit Court of Appeals held that a jury’s finding that a sheriff did not use excessive force (for the purposes 42 U.S.C. § 1983) in apprehending the plaintiff, was inconsistent with its finding that the sheriff had committed assault and battery under South Carolina Law.

The distinguishing factor between those cases and the present one is that the Court of Appeals in *Taha* and the Fourth Circuit Court of Appeals in *Roger* were blessed, in assessing the merits of the irreconcilably inconsistent verdict challenge, with full records. We, on the other hand, are left with a significantly incomplete record, bereft of the evidence adduced before the jury, the relevant instructions the jury received, and counsels’ closing arguments. We cannot assess the alleged adequacy (or inadequacy) of the evidence vis-à-vis the verdict without that context.

To be sure, this Court strives not to dismiss appeals for record omissions. For example, *Town of Cheverly Police Dept. v Day*, 135 Md. App. 384, 391, 762 A.2d 981, 985 (2000) and *Boswell* are two examples of that effort. In *Day*, involving a motion to dismiss under Maryland Rule 8-602(a)(6), although we did not have the complete trial transcript, we were confident that we “h[ad] before us all materials necessary to decide

this appeal, and the lack of a transcript was through no fault of the [appellant].”¹¹ (citation and quotation marks omitted). In *Boswell*, we explained, “the appellant motioned to correct the record and provided a transcript of the missing portion of the trial [record], certified as accurate by . . . [the] [r]eporting [c]ompany.” *Boswell*, 118 Md. App. at 24, 701 A.2d at 1164. Thus, we had before us all materials necessary to decide *Boswell*, and were satisfied that appellant corrected diligently the omission. *Id.*

Unlike *Day* and *Boswell*, Appellant here made insufficient effort to rectify his failure to order the trial transcripts when he knew (or should have known) their critical importance to our review of his intended arguments as to the evidentiary insufficiency of the jury’s allegedly competing damages awards. Appellant’s efforts, such as they were, to make otherwise a complete record were:

[I]dentified the contents the proposed joint record extract and did not list the trial transcript other than the post-judgment hearing before the trial court on the [A]ppellant’s motion for a partial new trial or a total new trial . . . [and] [i]nitiating numerous requests to the court reporter to produce portions of the transcript that were initially post-jury verdict and subsequently constituted any discussions between the trial court and respective counsel after the cross-examination of the final witness prior to the commencement of closing arguments through the end of trial.

Nowhere to be found are the evidentiary portions of the trial, the jury instructions, or counsel’s closing arguments, all of which seem to us, as noted previously, to be necessary for proper consideration of this appeal.

¹¹ *Day* does not explore the cause for the lack of the trial transcript, but indicates merely it was not appellant’s fault for its absence. *Town of Cheverly Police Dept. v Day*, 135 Md. App. 384, 391, 762 A.2d 981, 985 (2000).

Appellant rejoins that Appellee “fails to cite with any specificity what portions of the trial were at issue other than the jury verdict . . . [and identify the] phantom prejudice [Appellee’s arguments suffered] by the failure of the Appellant to provide a transcript of the witness[’] testimony.” Appellant misunderstands, in deploying this assertion, that Maryland Rule 8-411, which provides that it is the responsibility of an *appellant* to order, in writing from the court reporter, a transcript containing:

(1) a transcription of (A) all the testimony or (B) that part of the testimony that the parties agree, by written stipulation filed with the clerk of the lower court, is necessary for the appeal or (C) that part of the testimony ordered by the Court pursuant to Rule 8-206 (c) or directed by the lower court in an order; (2) a transcription of any proceeding relevant to the appeal that was recorded pursuant to Rule 16-502 (b); and (3) if relevant to the appeal and in the absence of a written stipulation by all parties to the contents of the recording, a transcription of any audio or audiovisual recording or portion thereof offered or used at a hearing or trial.

The Rule is clear; it is the responsibility of Appellant (not Appellee)¹² to provide a transcript containing what is listed in Maryland Rule 8-411(a)(1-3). Md. Rule 8-411.

¹² We comment briefly on *Moshyedi v. Council of Unit Owners of Annapolis Road Medical Center Condominium*, 132 Md. App. 184, 752 A.2d 279 (2000), where we found that an appellant’s initial failure to file timely the trial transcript did not warrant dismissal of the appeal, where there was no showing that appellee was prejudiced by the untimely filing. A close reading of *Moshyedi* reveals that the trial transcript was filed, although untimely. Appellant here *never* filed the complete transcript. Further, in *Moshyedi* appellant’s question presented was directed to the trial court’s decision to withdraw appellant’s breach of fiduciary duty claim from consideration by the jury. Reviewing such a question is not dependent on the evidentiary basis that a jury relies on in rendering its verdict; it was a purely procedural claim, rather than an evidence-based question. Here, our review necessitates a full and complete record in order to ascertain whether a jury verdict is irreconcilably inconsistent with the evidence presented at trial.

Thus, Appellant’s burden-shifting argument is inadequate to dissuade us from granting Appellant’s Motion to Dismiss.

The jury awarding Appellant and Appellee compensatory damages stemming from their asserted respective breaches of the same legal services retainer agreement, and yet concluding Appellant was not proved to have been negligent in his representation of Appellee in the D.C. Litigation Case, may be, on their face (as the trial judge observed) “awkward,” but we are not presented with a record from which we may analyze whether the verdicts are irreconcilably inconsistent. Accordingly, we dismiss this appeal.

**APPEAL DISMISSED. COSTS TO
BE PAID BY APPELLANT.**