Circuit Court for Baltimore City
Case No. 24-C-11-005962

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2796

September Term, 2015

LINDA A. DOMINGUEZ

v.

CHARLES W. RAWLINGS

Woodward, C.J.,
Beachley,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: November 22, 2017

Charles Rawlings filed a legal malpractice claim in the Circuit Court for Baltimore City against Linda Dominguez, a lawyer who he had hired to represent him in an employment discrimination claim before the Federal Equal Employment Opportunity Commission ("EEOC"). In his malpractice complaint, Rawlings alleged that Dominguez breached a duty of care owed to him by failing to file a Charge of Discrimination with the EEOC in a timely manner, and that, as a result of her negligence, he was precluded from pursuing his claim for discrimination in federal court.

The circuit court granted summary judgment in favor of Rawlings on the issue of liability. The case proceeded to trial on damages only and the jury awarded Rawlings $600,000. Dominguez then noted this appeal, in which she asks whether the circuit court erred in granting summary judgment on the issue of liability. For the reasons set forth below, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I. The underlying employment discrimination case

Rawlings was terminated from his employment with the City of Baltimore on May 11, 2006. The parties signed a Contract of Representation on December 19, 2006, in which they agreed that Dominguez would represent Rawlings before the EEOC regarding his claim of employment discrimination. Dominguez initially sent a letter to the EEOC, dated March 30, 2007, in which she alleged that the City discriminated against Rawlings on the basis of race as well as disability, and requested relief on his behalf. On or about June 8, 2007, the EEOC sent Dominguez five copies of a formal "Charge of Discrimination" that the EEOC had prepared from the information Dominguez provided, and advised that "you

do not have a Charge of Discrimination until you date, sign, and return these forms to the EEOC." According to the parties, Dominguez returned the executed Charge of Discrimination to the EEOC on July 23, 2007, after the expiration of the statutory period for filing.[1]

The City did not respond to the charge. The EEOC nonetheless considered the charges and, in September 2008, issued a determination (the "Reasonable Cause Determination") that "the evidence produced by [Rawlings] establishes reasonable cause to believe that [the City] violated [the Americans with Disabilities Act]." The EEOC notified the City of its Reasonable Cause Determination and invited the City to participate in informal conciliation.

In response to the EEOC Reasonable Cause Determination, the City denied both that it had discriminated on a racial basis and that it had failed to provide reasonable accommodation for Rawlings's disability. Additionally, the City argued that the Charge of Discrimination should be dismissed because Rawlings had failed to file it within the 300-day time limit.

In April 2010, the Attorney General notified Rawlings by letter (the "Right to Sue Letter") that "conciliation on [his] case was unsuccessful by the EEOC," and that "[i]t has been determined that the Department of Justice will not file suit on the … charge of

[1] Pursuant to 42 U.S.C § 2000e-5(e)(1), a charge must be filed with the EEOC within 180 days after the alleged unlawful practice occurred, or, under specified circumstances, within 300 days. Rawlings and the City agree that Rawlings' charge was subject to the 300-day filing period and that July 23, 2007 was beyond that limit.

discrimination that was referred to us by the … EEOC." The letter further notified Rawlings that he had an individual right to sue within 90 days.

Rawlings then filed a *pro se* complaint in the United States District Court for the District of Maryland on July 28, 2010, 91 days after he received the Right to Sue Letter. The City moved to dismiss the complaint as late-filed, and the federal district court granted the motion. The federal district court concluded that "Rawlings's failure to submit [the C]harge [of Discrimination] to the EEOC within the 300-day window, without more, requires the dismissal of his claims" and added that, "[e]ven if Rawlings's [C]harge [of Discrimination] had been timely filed, however, his Complaint in this action was not."

II. The subsequent legal malpractice claim and motion for summary judgment

Following the dismissal of his employment discrimination claim by the federal district court, Rawlings filed a complaint for legal malpractice against Dominguez in the Circuit Court for Baltimore City. He alleged that Dominguez had breached her duty of care by failing to file the Charge of Discrimination with the EEOC in a timely manner.

During the discovery process, Rawlings propounded requests for admissions of fact to Dominguez.[2] The requests for admissions included the following:

> **Admission 14:** Admit that your failure to timely file the EEOC notice and resultant dismissal of Charles Rawlings' case caused Charles Rawlings to sustain damages.

[2] In the body of his motion for summary judgment, Rawlings lists a total of 34 requests for admission of fact that he claims to have propounded. But the requests for admission that were attached as an exhibit to the motion contain only one set of 22 requests, and are identical to the only requests for admission that appear in the circuit court record. For purposes of our review, we consider only the 22 requests that were part of the record before the circuit court.

> **Admission 16:** Admit that, had Charles Rawlings' case no[t] been dismissed, Charles Rawlings would have prevailed in his discrimination suit against Baltimore City.
>
> **Admission 21:** Admit that your failure to adequately prepare Charles Rawlings' representation resulted in damages to Charles Rawlings.

Dominguez failed to respond to any discovery, including these requests for admissions.

Rawlings then filed a motion for summary judgment on both liability and damages. As grounds for the motion, Rawlings submitted that, because Dominguez had failed to respond to the request for admissions, "all material facts related to [liability and damages] are admitted as a matter of law and summary judgment is therefore proper." Rawlings also asserted that summary judgment was an appropriate sanction for Dominguez' failure to respond to any requests for discovery, including interrogatories and requests for production of documents.

At the hearing on the motion for summary judgment, Dominguez did not dispute that Rawlings had hired her to represent him before the EEOC, or that she had filed the Charge of Discrimination with the EEOC after the deadline for doing so. She stated only that Rawlings did not provide her with "documentation" until two weeks before she filed, that she "filed as quickly as [she] could," and that she "thought it was within the timeframe that was acceptable to the EEOC[.]"

The trial judge asked counsel for Rawlings to explain whether liability was established, "other than [Dominguez'] deemed admission[.]"Counsel for Rawlings pointed to the EEOC Reasonable Cause Determination, which appeared to satisfy the circuit court:

[THE COURT]: … I guess the question is, would Mr. Rawlings be in the position if this were an ordinarily litigated case; in other words, there was a dispute of liability on the record to establish that he would have won?

[APPELLEE'S COUNSEL]: Well, yes. There was a finding by the EEOC - -

[THE COURT]: Okay.

The circuit court then stated that, "putting aside whether or not the failure to respond to the Requests for Admissions is deemed an admission as a matter of law," Rawlings was entitled to summary judgment on the issue of liability because the EEOC had made a Reasonable Cause Determination:

> I think there's no dispute that the law requires for Mr. Rawlings to prevail as to liability, that there would be an underlying success of the claim, had it been brought timely.
>
> And here, we have the EEOC finding specifically, that in fact, Mr. Rawlings' termination was - - at least there was a finding of reasonable cause to believe, that it was unlawful, and the EEOC is doing its job to bring the parties together to - - my words - - to force a resolution of the issue short of filing a lawsuit.
>
> So, it would seem that on the record, Mr. Rawlings is successful in establishing that prong, that he would have succeeded down below … So … putting aside the mechanism of discovery failures … how can I avoid granting at least summary judgment on the issue of liability?

The circuit court granted summary judgment on the issue of liability only, based solely on the EEOC Reasonable Cause Determination. It concluded, "I think the record is plain that the EEOC found in favor of Mr. Rawlings, as far as his Complaint that his termination was unlawfully race-based."

STANDARD OF REVIEW

Pursuant to Md. Rule 2-501(f), upon motion of a party, a court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." "Whether a circuit court's grant of summary judgment is proper in a particular case is a question of law, subject to a non-deferential review on appeal." *Tyler v. City of College Park*, 415 Md. 475, 498-99 (2010). Accordingly, "in reviewing a grant of summary judgment, we review independently the record to determine whether the parties generated a dispute of material fact and, if not, whether the moving party was entitled to judgment as a matter of law." *Id.* "We review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the well-plead facts against the moving party." *Id.* Moreover, we ordinarily "consider only the grounds upon which the trial court relied in granting summary judgment." *Id.* (citation omitted).

ANALYSIS

To prevail on a claim for legal malpractice, "a former client must prove (1) the attorney's employment, (2) the attorney's neglect of a reasonable duty, and (3) loss to the client proximately caused by that neglect of duty." *Suder v. Whiteford, Taylor & Preston, LLP*, 413 Md. 230, 239 (2010) (cleaned up).[3] To determine whether the lawyer was the proximate cause of the former client's loss, the factfinder "must assume the role of the

[3] *See* Jack Metzler, *Cleaning Up Quotations*, J. APP. PRAC. & PROCESS (forthcoming 2018), **https://perma.cc/43XE-96W5.**

earlier adjudicator … to ascertain the probable outcome of the action." *Id.* at 232–33. "Simply put, the court must try a case within a case." *Id.* at 233.

Here, Dominguez alleges that the grant of summary judgment on liability to Rawlings was improper because there is a genuine dispute of material fact. The parties do not dispute the first two elements of the cause of action, that Dominguez was employed by Rawlings and that she neglected her duty by her untimely filing of the Charge of Discrimination. They disagree, however, on whether there is a genuine dispute of material fact on the third issue, namely, whether Rawlings sustained a loss due to Dominguez's failure to timely file the EEOC charge. Because we conclude that there is a material dispute on this issue, we hold that Rawlings was not entitled to summary judgment on liability in his malpractice action.

It is clear from the record that, in granting summary judgment, the circuit court did not rely on Rawlings' argument that, in failing to respond to the requests for admission, Dominguez had admitted liability. Rather, the trial court concluded that, because the EEOC determined there was reasonable cause to believe that Rawlings' employer had violated the law, Rawlings would have succeeded on his claim had Dominguez timely filed it. Because we hold that the EEOC's Reasonable Cause Determination did not conclusively establish that Rawlings would prevail on his claim of discrimination, we conclude that the court erred in granting summary judgment on that ground. We explain.

I. The EEOC Reasonable Cause Determination

"The EEOC is the federal agency charged with enforcing Title VII and other anti-discrimination statutes."[4] *A.C. v. Maryland Comm'n on Civil Rights*, 232 Md. App. 558, 569 (2017). The EEOC is empowered by Congress to take certain measures designed to "prevent any person from engaging in" employment practices that are statutorily unlawful. 42 U.S.C. § 2000e-5(a). When a Charge of Discrimination is filed with the EEOC, it investigates the complaint and determines whether or not there is reasonable cause to believe that the charge is true. 42 U.S.C. § 2000e-5(b).

Where, as in the present case, the EEOC makes a Reasonable Cause Determination, its role is limited to efforts to "eliminate" the discriminatory practice through informal means:

> If the Commission determines after [investigation of charges of unlawful employment practice] that there is reasonable cause to believe that the charge [of discrimination] is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.

42 U.S.C. § 2000e-5(b). If efforts at conciliation are unsuccessful, and where, as here, the employer is a government, governmental agency, or political subdivision, the EEOC can take no further action aside from referring the case to the Attorney General of the United

[4] Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000 *et seq.*) "protects employees from discrimination in his or her 'compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.'" *A.C. v. Maryland Comm'n on Civil Rights*, 232 Md. App. 558, 569 (2017) (quoting 42 U.S.C. § 2000e–2).

States.[5] 42 U.S.C. § 2000e-5(f)(1). If the Attorney General declines to file a civil action against a governmental agency in a case referred to him by the EEOC, he notifies the "person aggrieved" in a Right to Sue Letter that he or she may, within 90 days, file a civil action against the employer.[6] *Id.* Thus, a Reasonable Cause Determination by the EEOC serves as the starting point for resolution of a claim. But it does not establish, conclusively, that a claimant will prevail.[7] *Nerenberg v. RICA of So. Md.*, 131 Md. App. 646, 675 (2000) (holding "the [EEOC] Probable Cause Determination merely creates a colorable issue for litigation").

Here, because the Attorney General chose not to file an action against the City, Rawlings exercised his only option for relief by bringing an action against the City in federal court. But even if Rawlings' claim had proceeded in the federal court, the EEOC's Reasonable Cause Determination and the Right to Sue letter may not have been admissible

[5] The EEOC is, however, authorized to bring a civil action against a non-governmental employer. 42 U.S.C. § 2000e-5(f)(1).

[6] We use the masculine pronoun here because at the time the decision was made, in April 2010, the Attorney General was Eric H. Holder, Jr.

[7] It appears as though the circuit court partially based its grant of summary judgment on the mistaken assumption that Rawlings had some remedy available *directly from the EEOC*. The circuit court repeatedly stated that it believed Rawlings would have been successful on his claim "down below … mean[ing] at the *Administrative level*." As is evident from the enabling statute, however, the EEOC is without authority to provide a remedy to an individual who files a Charge of Discrimination against a non-federal employer. *A.C.,* 232 Md. App. at 569 ("[t]he EEOC, however, does not have the authority to fully adjudicate claims of discrimination and impose sanctions on employers—a power that remains with the federal courts." (citations omitted)). Accordingly, the circuit court was incorrect in concluding that the EEOC would have been able to "force a resolution" or provide "some remedy" to Rawlings.

in that lawsuit. *Cox v. Babcock & Wilcox Co.*, 471 F.2d 13, 15 (4th Cir. 1972). The federal district court has discretion over whether to admit EEOC Reasonable Cause Determinations in cases of alleged discrimination. *Id.*; *see also Coleman v. Home Depot, Inc*., 306 F.3d 1333, 1345 (3d Cir. 2002) (stating that, "[t]he weight of the case law holds that [federal] Rule 403 may operate on an EEOC report, and that the decision of whether or not an EEOC Letter of Determination [of reasonable cause] is more probative than prejudicial is within the discretion of the trial court, and to be determined on a case-by-case basis." (citations omitted)).

Moreover, even assuming that the EEOC Reasonable Cause Determination and Right to Sue Letter were admitted in Rawlings' federal court action, they would not have been dispositive on the question of whether the City discriminated against Rawlings. *Nerenberg*, 131 Md. App. at 675 ("even when the EEOC finds probable cause and issues a right-to-sue letter, summary judgment [for the employer] may be appropriate"). Further, the City would have been free to introduce other evidence with which to dispute the findings of the EEOC. *Id.* Thus, neither the EEOC Reasonable Cause Determination nor the Right to Sue Letter could have been construed as proof that Rawlings would have prevailed against the City.

In granting Rawlings' motion for summary judgment on liability, the trial court mistakenly assumed that the EEOC's Reasonable Cause Determination, coupled with the Right to Sue Letter, conclusively established that Rawlings would have been successful on his claim of discrimination against the City. Because the circuit court afforded improper weight to the EEOC's findings, it erred in granting summary judgment to Rawlings on

liability. *Id.*; *see, e.g., Conkwright v. Westinghouse Elec. Corp.*, 739 F. Supp. 1006, 1014-16 (D. Md. 1990) (Plaintiff failed to establish a *prima facie* case of discrimination despite a finding of probable cause that he was likely terminated due to his age). There remains a dispute of material fact regarding whether Rawlings would have won his federal court case had Dominguez not breached her standard of care during her representation of Rawlings with the EEOC. Thus, on remand, the finder of fact must consider fully the probable outcome of Rawlings' discrimination case against the City before making a determination on Dominguez' liability for the malpractice action. *See Suder*, 413 Md. at 239.

II. The Requests for Admissions

We make one additional observation to assist the circuit court on remand. In the first go-round, Rawlings argued that Dominguez admitted liability in the malpractice action by failing to respond to Rawlings' Requests for Admissions. Rawlings contended that, pursuant to Maryland Rule 2-424(b) liability was established because Dominguez did not deny that her failure to timely file with the EEOC resulted in damages to Rawlings. On remand, the circuit court must consider the phrasing of the Requests for Admissions in determining whether Dominguez' failure to respond constitutes a concession of liability. We explain.

Maryland Rule 2-424(b) provides: "[e]ach matter of which an admission is requested shall be deemed admitted unless … the party to whom the request is directed serves a response." Under Rule 2-424(a), a party is entitled to request the opposing party to admit "the truth of any relevant matters of fact." Md. Rule 2-424(a). This Court has noted that "ultimate issues of fact in a case" *may* be appropriate subject matter for a party's

Requests for Admissions. *Gonzales v. Boas*, 162 Md. App. 344, 359 (2005) (a party may request an admission of the truth of "ultimate issues of fact in a case") (internal citation omitted); *but see St. James Constr. Co. v. Morlock*, 89 Md. App. 217, 230-31 (1991) (holding that a party is not entitled to an award of attorney's fees under Md. Rule 2-424(e) where the requests for admissions involved "ultimate issues of fact" such as whether a condition "created an unreasonable risk of bodily injury" or whether a party was "negligent.").

By contrast, however, we note that Maryland law is clear that Requests for Admissions cannot require speculation or conjecture. Requests for Admissions may seek "matters of fact," the truth of which can be admitted or denied. Md. Rule 2-424(a). Hypothetical statements calling for conjecture or speculation, including as to the probable outcome of a lawsuit, however, are not permitted. *Carter v. Aramark Sports and Entm't. Servs., Inc.*, 153 Md. App. 210, 225 (2003) (noting that facts offered for summary judgment must not be conjectural or speculative); *see also* Md. Rule 2-501(c) (providing that "an affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts *as would be admissible in evidence*[.]") (emphasis added). Thus, on remand, the trial court should evaluate whether each of the Requests, as phrased, appropriately sought factual admissions as to ultimate issues of fact or whether they called for improper conjecture and speculation.[8]

[8] Dominguez makes several additional claims to which we respond in summary fashion:

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THE OPINIONS EXPRESSED HEREIN. COSTS TO BE PAID BY APPELLEE.

Dominguez claims that the circuit court "should have considered and granted a motion" to extend the discovery deadline. It does not appear, from the record before this Court, that the motion that was included in the record extract was ever filed with the circuit court, or that Dominguez orally requested an extension of discovery. Thus, we decline to reach this issue. *See* Md. Rule 8-131(a).

We will not address Dominguez' apparent contention that Rawlings' malpractice claim against her was barred by the statute of limitations because Dominguez provides no legal argument in support of her position. *See* Md. Rule 8-504(a)(6) (providing that a party's brief shall include "[a]rgument in support of the party's position on each issue.").

Finally, we reject Dominguez' claim that the circuit court should have dismissed Rawlings' malpractice claim against her pursuant to Md. Rule 2-507(b) for lack of jurisdiction. We note that "the decision to grant or deny the dismissal is committed to the sound discretion of the trial court," and Dominguez sets forth no argument that would lead us to conclude that the circuit court abused its discretion in denying the motion to dismiss based on Rule 2-507(b). *See* R. 8-504(a)(6).