

Circuit Court for Queen Anne's County  
Case No.: C-17-CV-21-000125

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2041

September Term, 2021

---

VAN POWERS

v.

CHERYL CAPPS

---

Nazarian,  
Ripken,  
Zarnoch, Robert A.  
(Senior Judge, Specially Assigned),

JJ.

---

PER CURIAM

---

Filed: October 28, 2022

\*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.

Van Powers, appellant, filed a civil complaint in the Circuit Court for Queen Anne’s County alleging breach of contract and related tortious conduct by Cheryl Capps, appellee. Powers was unable to locate Capps to effectuate service of process within 120 days. Consequently, the clerk issued a Notice of Contemplated Dismissal under Maryland Rule 2-507(b), which gave Powers 30 days to file a motion showing good cause why the court should defer dismissal. After the clerk rejected his first, timely motion because it lacked a signature, Powers filed a motion to defer dismissal approximately one week after the 30-day deadline passed. Powers included a separate hearing request with his motion. Despite this request, the circuit court denied Powers’s motion the next day without a hearing and ultimately dismissed the case without prejudice.

On appeal, Powers asserts that he properly requested a hearing on a dispositive motion and therefore the circuit court erred by denying it without a hearing. We agree.

When a circuit court denies a motion to defer dismissal, it dismisses the case “for lack of jurisdiction or prosecution without prejudice[.]” Md. Rule 2-507(f). Under Rule 2-311(f), the court “may not render a decision that is dispositive of a claim or defense without a hearing if one was requested[.]” A decision is dispositive when it “conclusively settles a matter.” *Parker v. Hous. Auth. of Balt. City*, 129 Md. App. 482, 488 (quotation marks and citation omitted). “An order of dismissal without prejudice conclusively settles the matter.” *Id.* Therefore, because Powers requested a hearing on his Rule 2-507(e) motion, the circuit court was required to hold one. This remains true even though Powers’s motion was untimely. Rule 2-311(f)’s hearing requirement is triggered by the result of a decision, not its grounds. Put another way, even if the circuit court denied Powers’s motion

because it was untimely rather than because it lacked merit, that decision was still dispositive of his claim. And that is all Rule 2-311(f) requires.

**JUDGMENT OF THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.**