

Circuit Court for Anne Arundel County
Case No. 02-C-11-159529

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2094

September Term, 2013

RAYMOND NELSON

v.

CLINTON JACKSON

*Wright,
Reed,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: February 24, 2020

* Wright, Alexander J., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

*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.

Clinton Jackson (“Appellee”) filed a complaint to recover damages against Raymond Nelson (“Appellant”) for breach of contract, based on unpaid payments for services rendered between 2006 and 2010, pursuant to an Agreement and an Addendum to that agreement. At the conclusion of a bench trial, the trial court awarded Appellee judgment in the sum of \$135,636.72 plus legal fees totaling \$64,147.00. This appeal followed where Appellant presents five questions for our review, which we have condensed to three and rephrased for clarity¹:

- I. Did the trial court err in finding that the modifications proposed in Addendum were valid and enforceable?

¹ Appellant presents the following questions:

1. Whether there is any evidence to support the trial court’s purported finding that the operative contract consisted of the agreement tendered by the Defendant but superseded by an “Addendum” to that agreement, where (a) there is no testimony to support such a finding and (b) both agreements were purportedly signed the same day, have the same last page with the same handwritten initialed changes, and, as a result of the handwritten initialed changes the Addendum contains inconsistent provisions concerning compensation and the Addendum appears to be constructed with scissors and paste and clearly altered.
2. Whether, notwithstanding the trial court’s failure to make the findings required by Md. Rule 5-1008(b), the failure of the Plaintiff to produce the original document or offer proof that the “copy” was a true copy of the original, given that it was not possible for the two documents to have the same unique last page.
3. Whether, if there is a valid agreement, the handwritten provisions prevail over the typewritten provisions.
4. Whether the trial court’s *sua sponte* analysis of an “alteration” conflicts with basic Maryland law that “a party to a contract does not have any unilateral rights to modify....” And that any such modification requires a meeting of the minds and consideration.
5. Whether there is any basis to award plaintiff attorney fees.

- II. Did the trial court err in its determination regarding the authenticity of the Addendum?
- III. Did the trial court err in awarding attorney's fees to Appellee?

In response to Appellant's appeal, Appellee has filed a motion to dismiss the appeal, claiming that Appellant's appeal is untimely. Appellee asserts that the final judgment in this case was entered on August 13, 2014. As Appellant's second appeal² in this matter was not filed until October 17, 2014, Appellee contends that the appeal is untimely pursuant to Maryland Rule § 8-202.

For the following reasons, we grant Appellee's motion to dismiss Appellant's appeal as untimely.

FACTUAL & PROCEDURAL BACKGROUND

Appellant is a cardiologist and the owner of a limousine company, Big Time Limos, Incorporated. Appellee, Appellant's former tax attorney³, was hired by Appellant in April 2001 to prepare Appellant's 1998 & 1999 tax returns and to secure purchase money financing for Appellant's pending purchase of a motorcycle. Pursuant to an April 10, 2001 Consulting Agreement ("2001 Consulting Agreement"), Appellee was only to provide specified tasks, unlike the prior, on-going services provided by Appellee during his time as Appellant's attorney.

² See discussion *infra*.

³ Appellee was formerly barred in the District of Columbia but was ultimately disbarred for misappropriating and commingling funds, failing to maintain proper records for his trust account, and failing to represent his client's best interests after his representation was terminated.

After Appellee secured financing for Appellant’s motorcycle, Appellant requested further consulting services from Appellee through a 2003 Consulting Agreement (“2003 Consulting Agreement”). In that agreement, Appellant suggested a hybrid fee structure, where Appellant would pay a flat fee for pre-specified services, which were itemized in the agreement, and an hourly rate for any other services reasonably requested by Appellant.

According to Appellee, Appellant defaulted. However, Appellee continued to provide Appellant services and “carried” the unpaid balance owed by Appellant with a “customary” 1.5% interest rate on unpaid/overdue balances. While Appellant eventually cured his default by paying off the outstanding settlement payments, Appellant did not pay the outstanding interest that had accumulated on those previously-defaulted payments.

In 2005, Appellee agreed to the previously-mentioned hybrid terms on the 2003 Consulting Agreement. As part of the agreement, Appellee required Appellant to liquidate all arrears from the prior defaulted agreement prior to entering into the new agreement for further discounted services. However, Appellant advised Appellee that he didn’t have the funds to liquidate the arrears and instead suggested a discounted, lump/installment payment settlement plan to liquidate the arrears. Appellant also suggested that such payments would revert to the original debt, plus accumulated interest, if he defaulted on these lump/installment payments.

Thereafter, in July 2006, Appellant requested a one (1) year extension of the hybrid fee agreement to extend the 2005 agreement. The new agreement was signed on July 13, 2006, and provided that Appellee would render consulting services for a flat fee of \$500

for the first six (6) months and \$1,000 per month thereafter in lieu of Appellee's typical hourly rate of \$175-250.00.

An addendum ("the Addendum"), which is the subject of this litigation, was also "signed" on July 13, 2006, the same date the Agreement was signed. The first page of the Addendum is dated June 17, 2006, and states that Appellant will pay \$350.00/hour for "other services" rendered by Appellee. The last page of the Addendum is identical to the last page of the Agreement, including the July 13, 2006 signature date, handwritten changes, and a reference that the flat fee was in lieu of a \$175-200 hourly fee.

From 2005-2010, Appellee provided Appellant the services indicated in the Agreement and the Addendum. Nonetheless, Appellee alleges that Appellant remained in default with respect to the payment of the balance due from 2006 to 2010. As such, in April 2010, Appellee ceased providing services to Appellant for Appellant's failure to pay off his outstanding balance owed to Appellee.

During the entire period Appellee provided consultant services to Appellant, Appellee issued detailed billing to Appellant on a monthly basis. Appellee alleges that Appellant never complained about the charges and that Appellant typically responded to the bills by stating he had not forgotten about his outstanding balance and would eventually make the required payment(s). As of March 2, 2011, however, Appellant had failed to cure his default with Appellee.

Appellee ultimately filed a complaint to recover damages for Appellant's alleged breach of contract. During trial, Appellant argued the he never signed the Addendum, never approved of the terms in the Addendum, and that the Addendum is not enforceable. Instead,

Appellant argued that Appellee was only entitled to receive a \$500 flat fee for his services for the first six months of each agreement, and then a \$1000/month fee for the remainder of the agreement.

At the conclusion of a bench trial, which occurred at the same time Appellee was handling disbarment proceedings, the trial court awarded Appellee judgment in the sum of \$135,636.72 plus legal fees, totaling \$64,147.00. In part, the trial court held that the operative agreement included the modified terms stated in the Addendum. Furthermore, the trial court found that Appellee had made “alterations” to the Agreement, which Appellant accepted by continuing to employ Appellee and promising to fulfill the numerous requests for payment made by Appellee.

The trial court’s order was signed on August 9, 2013 and docketed by the clerk’s office on August 13, 2013. Appellant timely noted an appeal, case number 1502, on September 4, 2013. However, the appeal was dismissed due to Appellant’s failure to file a Civil Appeal Information Report.

On September 24, 2013, the trial court filed a memorandum reflecting the court’s August 9, 2013 order, again ordering Appellant to pay Appellee \$135,636.72 and the legal fees in the amount of \$64,147.00. Appellant filed a second appeal, case number 2094/13, on October 17, 2013. Appellee responded by filing a motion to dismiss Appellant’s appeal as untimely, arguing that the court’s final judgment came on August 9, 2013, and the September 24, 2013 memorandum only served as clarification and part of the court’s recordation process.

Instead of deciding on Appellee's motion, this Court initially stayed any consideration of the motion pending the conclusion of bankruptcy proceedings involving Appellant and Appellee. When the bankruptcy proceedings concluded and this Court lifted the stay, Appellee renewed his motion to dismiss Appellant's second appeal in this matter. However, on March 31, 2016, this Court denied Appellee's motion to dismiss without any explanation.

The second appeal is now before this Court. Appellee has once again filed a motion to dismiss this appeal claiming that Appellant's appeal is untimely.

DISCUSSION

A. Appellee's Motion to Dismiss

Appellee argues that Appellant's appeal is untimely, as it was filed more than 30 days after judgment was entered in this case. In his motion, Appellee claims that final judgment was entered in this case on August 13, 2013, thereby requiring Appellant to note an appeal by September 12, 2013. Appellant did note an appeal, case number 1502/13, prior to September 12, 2013, but that appeal was ultimately dismissed for Appellant's failure to file the Civil Appeal Information Report as required by Md. Rule § 8-205.

On September 24, 2013, the circuit court filed a memorandum discussing the court's reasoning in why it entered judgment in favor of Appellee in the amount of \$135,636.72., in addition to the attorney's fees, totaling \$64,147.00. Thereafter, on October 17, 2013, Appellant filed a second appeal, case number 2094/13 and the appeal currently before this Court, relating to the September 24 memorandum. For that appeal, Appellant filed his first

Civil Appeal Information Report on November 27, 2013, and a second Report on December 20, 2013.

Thereafter, Appellee asserted that Appellant's second appeal was untimely. However, this Court stayed any consideration of Appellee's motion to dismiss pending the completion of Appellant's bankruptcy proceedings. After the bankruptcy proceedings were completed, this Court lifted the stay on this case on February 2, 2016. Thereafter, Appellee renewed his motion to dismiss the second appeal. This Court, on March 18, 2016, denied Appellee's motion to dismiss but did not discuss why the motion was being denied.

Now, for the third time Appellee argues that this Court should dismiss Appellant's second appeal as untimely.

Md. Rule § 8-202(a) requires that a notice of appeal be filed within 30 days after entry of the judgment or order from which the appeal is taken. Additionally, section 12-301 of the Courts and Judicial Proceedings Article ("Cts. & Jud. Proc.") provides that "a party may appeal from a final judgment entered in a civil or criminal case by a circuit court." In that context, the term "[f]inal judgment" means a judgment, decree, sentence, order, determination, decision, or other action by a court, including an Orphans' court, from which an appeal, application for leave to appeal, or petition for certiorari may be taken." Cts. & Jud. Proc. § 12-101(f). By defining "final judgment" in this circular fashion, the General Assembly implicitly has left it to the Court of Appeals to develop a definition of finality. *See Metro Maint. Sys. S., Inc. v. Milburn*, 442 Md. 289, 297 & n.7 (2015).

The Court of Appeals has frequently stated that the accepted test for finality is whether the court's ruling has the effect of putting the parties out of court and denying

them the means of further prosecuting the case or the defense. *See, e.g., Houghton v. Cty. Comm'rs of Kent Cty. (Houghton II)*, 307 Md. 216, 221 (1986). According to the Court:

To have the attribute of finality, the ruling must be so final as either to determine and conclude the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding.

Rohrbeck v. Rohrbeck, 318 Md. 28, 41 (1989) (italics removed). A ruling is final if it is “unqualified” and if “nothing in the trial court’s action suggested any contemplation that a further order be issued or that anything more be done.” *Doehring v. Wagner*, 311 Md. 272, 275 (1987); *see also Miller & Smith at Quercus, LLC v. Casey PMN, LLC.*, 412 Md. 230, 243 (2010).

This Court has often explained that a final, appealable judgment must possess three attributes:

(1) it must be intended by the court as an unqualified, final disposition of the matter in controversy, (2) unless the court properly acts pursuant to Md. Rule 2–602(b), it must adjudicate or complete the adjudication of all claims against all parties, and (3) the clerk must make a proper record of it in accordance with Md. Rule § 2–601.

Rohrbeck, 318 Md. at 41. The fact that the judge issues an unqualified, final disposition that adjudicates all the claims against all the parties satisfies the first two elements, but it is not sufficient to constitute a final, appealable judgment and start the time for an appeal. The third requirement that there be a proper record of the judgment in accordance with Md. Rule § 2–601 must also be satisfied. As explained above, Md. Rule § 2–601(a) now requires that the judgment be set forth on a separate document before it is entered by the

clerk. *See Circuit City Stores, Inc. v. Rockville Pike Joint Venture Ltd. P'ship*, 376 Md. 331, 347 & n. 3 (2003).

In this case, the circuit court issued a single-paged, separate Order on August 9, 2013, which was filed by the clerk on August 13, 2013. This Order explicitly stated that the court found Appellant liable for breach of contract in the amount of \$135,363.72. The order also found Appellant liable for attorney's fees in the amount of \$64,147. As this order was the final disposition in this matter, adjudicating all claims brought by Appellee, and was set forth in a separate document that was filed by the court, it is a "final judgment" for the purposes of appealability.

Though Appellant's counsel claims that an off-the-record conversation occurred in chambers in which the circuit court judge noted that her judgment was not final and requested briefs from the parties discussing pertinent contract law, nothing exists on the record to support such a claim. Relying solely on the record and the evidence before this Court, we find that final judgment was entered by the clerk's office on August 13, 2013. The subsequent memorandum provided by the circuit court on September 24, 2013, discussing the reasoning behind the court's August 9, 2013 decision, does not impact this Court's determination of when final judgment was entered. As such, Appellant had 30 days from August 13, 2013 to note an appeal. As Appellant's second appeal was not filed until October 17, 2013, the appeal is untimely.

Accordingly, we grant Appellee's motion to dismiss Appellant's appeal pursuant to Md. Rule § 8-202.

B. Appellant’s Appeal

Even if Appellant’s appeal had been timely filed with this Court, Appellant would be afforded no relief by this Court. Our review of the circuit court’s order is governed by Md. Rule § 8–131(c), which provides:

When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witness.

“The clearly erroneous standard does not apply to the circuit court’s legal conclusions, however, to which we accord no deference and which we review to determine whether they are legally correct.” *Cattail Assocs. v. Sass*, 170 Md. App. 474, 486 (2006). Additionally, “discussing Md. Rule 886, the predecessor to Rule § 8–131(c), this Court found that it is equally obvious that the clearly erroneous portion of [the] Rule [] does not apply to a trial court’s determinations of legal questions or conclusions of law based upon findings of fact.” *Garfink v. The Cloisters at Charles, Inc.*, 392 Md. 374, 383 (2006) (internal quotations and citations omitted).

i. Modification of the Agreement

Appellant first argues that the trial court erred in finding that the Addendum was enforceable. However, the trial court’s reasoning was not clearly erroneous. As was noted by the trial court, an alteration does not discharge one’s own duty under a contract and, therefore, does not terminate any right of the other party unless the other manifests his consent. *Restatement (Second) of Contracts*, § 286, at 1 (1981). An alteration may be

regarded as manifesting a desire on the part of its maker to have a contract in the altered form, and assent by the other party will be treated as if it were acceptance of any offer to substitute the altered terms. *Id.* at § 287. Manifestation of assent may be wholly or partly by written or spoken words or by other acts or by failure to act. *Id.* at § 19, at 1.

Here, the trial court found that while Appellee unilaterally modified the 2006 Agreement through the July 13, 2006 Addendum, Appellant assented to such changes by continuing to employ Appellee, accepting the invoices provided by Appellee and promising to pay such outstanding balances. As Appellant's actions manifested his acceptance of the new terms in the Addendum, the Addendum became part of the binding agreement between the parties.

ii. Originality of the Agreement and Addendum

Appellant also argues that the trial court should have found that the Addendum was not an original document and therefore is fraudulent and cannot be accepted. However, Appellant misconstrues the finding of the trial court.

As previously stated, the trial court found that regardless of whether the Addendum acted as a unilateral modification, the modification will become part of the original agreement if assented to by the other party. Here, Appellant's counsel contends that the trial court's "failure" to adhere to Md. Rule § 5-1008(a) was clear error. However, the trial court discussed that while Appellee misrepresented himself as a licensed attorney in drafting the 2006 Agreement, thus allowing Appellant to void the agreement entirely, Appellant's ability to void for misrepresentation was extinguished when he learned of the misrepresentation and failed to void the agreement in a timely fashion. Here, Appellant

learned of Appellee’s misrepresentations and his disbarment in 2001. Additionally, numerous emails indicate that Appellant was relying on legal services from other attorneys, not Appellee. As such, the trial court found that Appellant had sufficient knowledge of Appellee’s misrepresentations but failed to void the agreement in a timely fashion. Therefore, Appellant is still bound by the terms of the agreement.

The “originality” of the 2006 Agreement is not a question that required an answer by the trial court. Instead, the trial court made a ruling that regardless of the Addendum’s authenticity, Appellant manifested assent to the Addendum’s new terms by accepting numerous invoices for years, continuing to employ Appellee, and making numerous promises to pay. Even if the Addendum was fraudulent, the power of Appellant to void the agreement for fraud and misrepresentation passed long ago.

iii. Attorney’s Fees

The Addendum, which was deemed enforceable by the trial court, also includes terms regarding the reasonable cost of collecting any outstanding debts owed by Appellant under the terms of the 2006 Agreement. Specifically, the Addendum states that “[c]lient agrees to pay . . . reasonable costs of collection, including attorney’s fees.” However, Appellant now argues that the trial court erred in awarding Appellee attorney’s fees in this matter.

In Maryland, the courts have held that provisions in contracts providing for awards of specific amounts of attorney’s fees are typically valid and enforceable. *Monmouth Meadows Homeowners Ass’n., Inc. v. Hamilton*, 416 Md. 325 (2010). Even if a contract clause is not explicitly limited to reasonable fees, “trial courts are required to read such a

term into the contract and examine the prevailing party’s request for reasonable fees.” *Id.* at 333.

Here, the trial court analyzed the evidence presented at trial, including the reasonableness of the attorney’s fees requested by Appellee. The trial court reviewed Appellee’s Statement of Attorney’s Fees and Other Litigation Costs Reasonably Incurred. In reliance of Rule 1.5 of the Maryland Rules of Professional Conduct, the trial court found that the hourly rate of \$250/hour requested by Appellee to be reasonable. In addition to service, copying, and mail/postage fees, the trial court ultimately found the awarding of \$64,147 in attorney’s fees to be reasonable.

As the trial court relied on a correct interpretation of law in reviewing the terms of an enforceable agreement, and because the court sufficiently determined the reasonableness of Appellee’s request for attorney’s fees, this Court would affirm the trial court’s award of attorney’s fees. Simply put, the trial court’s judgment was not clearly erroneous, and as a matter of law, was correct.

Accordingly, we hereby grant Appellee’s motion to dismiss Appellant’s appeal as untimely. Furthermore, for the reasons discussed *supra*, we note that this Court would have affirmed the judgment of the Circuit Court for Anne Arundel County if Appellant’s appeal had been filed timely.

**APPELLEE’S MOTION TO DISMISS
GRANTED. COSTS TO BE PAID BY
APPELLANT.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/2094s13cn.pdf>