Circuit Court for Prince George's County
Case No. CAL15-32596

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2320

September Term, 2016

MANUEL TAYLOR, JR., ET AL.

v.

EDER RAMOS BARBOSA, ET AL.

Eyler, Deborah S.
Wright,
Berger,

JJ.

Opinion by Berger, J.

Filed: May 2, 2018

*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.

This appeal arises from a breach of contract claim brought by Manuel Taylor, Jr. ("Taylor") and Soul Saving Church of God for All People Non Denomination ("Soul Saving Church of God"), appellants, against Eder Ramos Barbosa ("Barbosa") and ERB Properties, LLC. ("ERB Properties"), appellees, in the Circuit Court for Prince George's County, Maryland. Taylor and Soul Saving Church of God asserted that ERB Properties had failed to pay the agreed-upon price for a property it had purchased from Soul Saving Church of God.

About a month before trial, Taylor and Soul Saving Church of God asked for leave to amend their complaint or, in the alternative, to dismiss their case without prejudice. The motion was denied. When the trial date arrived, Taylor and Soul Saving Church of God failed to appear in court, and the circuit court dismissed their case with prejudice. Taylor and Soul Saving Church of God moved the circuit court to reconsider its decision, but the motion was denied.

On appeal, Taylor and Soul Saving Church of God present two questions for our review, which we have rephrased as follows:

1. Whether the circuit court abused its discretion in denying the appellants' motion for leave to amend their complaint;

2. Whether the circuit court abused its discretion in dismissing the appellants' complaint with prejudice.

For the reasons explained herein, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Factual Background

Taylor is the pastor and president of Soul Saving Church of God. In January of 2014, Soul Saving Church of God entered into an agreement to sell a property located at 11 W Street, NW in Washington, DC ("the Property") to ERB Properties. Barbosa is the founder and president of ERB Properties. According to Taylor and Soul Saving Church of God, ERB Properties agreed to pay $350,000.00 up front, $100,000.00 at closing, and $75,000.00 upon completion of the project. ERB Properties and Barbosa maintain that they never agreed to pay any more than $350,000.00.

The record reflects that Soul Saving Church of God's Board of Directors passed a resolution ("the Resolution") authorizing the sale of the Property to ERB Properties. The Resolution, which is dated January 12, 2014, describes the consideration for the sale of the Property as follows:

> $350,000 (three hundred fifty thousand dollars)as [sic] agreed in the ratified contract.
> $100,000 (one hundred thousand dollars) On day of closing.
> $75,000 (seventy five thousand dollars) After completion of the project.

The Resolution also refers to a "proposed agreement of purchase and sale, which is to be inserted in the minute book of this corporation immediately following the minutes of this meeting." There is no separate agreement attached to the Resolution. The back of the Resolution appears to bear the signatures of Barbosa, Taylor, and Montize Cannon ("Cannon"), the vice president of Soul Saving Church of God. Barbosa denies executing the Resolution.

The record also includes a document titled "Regional Sales Contract," dated January 11, 2014, which purports to be a written contract between ERB Properties and Soul Saving Church of God concerning the sale of the Property. The Regional Sales Contract lists the sales price for the Property as $350,000.00. There is no reference in the document to additional payments or any other price. Taylor, Cannon, and Barbosa initialed each page and signed the last page. Cannon's signature is dated "1-15-13";[1] the other signatures are undated. Taylor claims that he "was only told to sign documents and was not given a copy of the Regional Sales Contract." Taylor and Soul Saving Church of God also point out that the sales price in the Regional Sales Contract was handwritten, whereas all the other text was printed or typewritten.

On February 4, 2014, Taylor and Cannon signed a deed ("the Deed") on behalf of Soul Saving Church of God transferring the Property to ERB Properties. The Deed lists the consideration as $350,000.00. Taylor and Soul Saving Church of God do not deny executing the Deed, nor do they dispute its authenticity.

Although the date is not captured in the record, at some point ERB Properties paid $350,000.00 to Soul Saving Church of God. According to the appellants, ERB Properties subsequently made a second payment of $100,000.00. When Soul Saving Church of God sought an additional payment of $75,000.00, ERB Properties denied that the money was owed.

[1] Cannon presumably executed the document on January 15, 2014 and wrote the wrong year by mistake.

Procedural Background

On October 28, 2015, Taylor and Soul Saving Church of God filed a complaint for breach of contract against Barbosa and ERB Properties in the Circuit Court for Prince George's County, Maryland. The sole relief requested by the plaintiffs was monetary damages. The circuit court issued a scheduling order which provided that all amendments to pleadings were to be made, and all additional parties added, no later than sixty days prior to the pretrial conference.

The pretrial conference was held on April 14, 2016. On the same day, the circuit court set the trial date for November 10, 2016. On August 31, 2016, Taylor and Soul Saving Church of God filed an amended complaint in which they requested a remedy of rescission rather than monetary damages. The circuit court declined to consider the amended complaint because "no request to file an amended pleading outside of the scheduling order has been filed."

On September 20, 2016, the parties engaged in alternative dispute resolution ("ADR"). During ADR, Barbosa and ERB Properties produced copies of the Deed and the Regional Sales Contract. According to Taylor and Soul Saving Church of God, this was the first time that they had seen a copy of the Regional Sales Contract,[2] and they "suspected

[2] In fact, a copy of the Regional Sales Contract was attached to a request for admission sent to the appellants on July 27, 2016. Taylor and Soul Saving Church of God admitted that the Regional Sales Contract was authentic and that they had signed it. The Regional Sales Contract was also attached to a motion for summary judgment filed by Barbosa and ERB Properties on August 2, 2016.

fraud because a lower sales price means the Appellee would pay a lower real estate transfer tax."

On October 3, 2016, Taylor and Soul Saving Church of God filed a motion for leave to amend their complaint or, in the alternative, to dismiss their case without prejudice ("the Motion to Amend"). Taylor and Soul Saving Church of God claimed that they had "discovered a major fraud in this transaction" and asked "to amend the complaint and add other Defendants." They did not identify the defendants whom they wished to add. Taylor and Soul Saving Church of God also asked the court to amend the scheduling order, stating that "[t]he existing scheduling order is not adequate to conduct the discoveries on this massive fraud and ongoing scam."

On October 27, 2016, the circuit court denied the Motion to Amend. In a memorandum opinion, the circuit court emphasized the tardiness of the filing:

> Not only is the Amended Complaint filed way out of time as far as the scheduling Order is concerned, counsel waited more than a month after the follow up pretrial conference (and only a little over 5 weeks prior to trial) to file his motion for leave to file the Amended Complaint. This case has been pending before the Court for nearly a year at this juncture, and Plaintiff now seeks to turn what had been a basic contract claim for monetary damages into an equity action involving rescission of a real estate transfer which occurred over two and one-half years ago.

The circuit court also noted that "the parties agreed on the trial date of November 10, 2016."

On November 10, 2016, Taylor and Soul Saving Church of God failed to appear for trial in person or by counsel. Barbosa and ERB Properties were present with counsel. Upon reviewing the procedural history of the case, the trial judge dismissed the case with

prejudice. A docket entry dated November 10, 2016 states "FTA case dism. w/prejudice CCS[.]"

On November 18, 2016, Taylor and Soul Saving Church of God -- apparently unaware that their case had been dismissed -- moved the court to reconsider their Motion to Amend. The circuit court denied the motion on the following grounds:

> On November 10, 2016, this matter was called for trial before Judge Davey. The docket entries indicate that the plaintiff failed to appear. Defendant appeared with counsel. The matter was dismissed with prejudice. This court has no jurisdiction to entertain these motions.

On December 1, 2016, Taylor and Soul Saving Church of God moved the circuit court to reconsider the dismissal of their case with prejudice. They stated that their attorney had "inadvertently deleted this particular case from his electronic calendar on his phone, and because the electronic calendar was synched, it is also deleted this case from all the undersigned counsel's calendars[.]" On December 27, 2016, the circuit court denied the motion for reconsideration. Taylor and Soul Saving Church of God noted their appeal on January 5, 2017.

Standard of Review

As a preliminary matter, we note that the scope of our review is limited by the timing of the appellants' appeal. Under Maryland Rule 8-202, would-be appellants are generally required to file a notice of appeal "within 30 days after entry of the judgment or order from which the appeal is taken." The deadline may be extended by the filing of certain post-judgment motions. Md. Rule 8-202. A motion to revise a judgment under Maryland Rule 2-535 must be filed within ten days of judgment in order to stay the time for appeal.

Sieck v. Sieck, 66 Md. App. 37, 43-44 (1986) (citing *Unnamed Attorney v. Griev. Comm'n.*, 303 Md. 473, 484-86 (1985)). "When a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion." *Furda v. State*, 193 Md. App. 371, 377 n.1 (2010); *see also Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 723 (2002) (declining to review the underlying judgment where the motion for reconsideration was filed more than ten days after entry of judgment); *accord Wormwood v. Batching Sys., Inc.*, 124 Md. App. 695, 700 (1999).

Here, the circuit court dismissed the appellants' case with prejudice on November 10, 2016. The dismissal was entered on the docket the same day. At that point, the deadline for filing an appeal was December 10, 2016. Taylor and Soul Saving Church of God did not challenge the circuit court's final judgment until December 1, 2016, when they filed a motion to reconsider the dismissal of the case with prejudice.[3] Because the Rule 2-535 motion was filed more than ten days after entry of judgment, the time for an appeal was not stayed. Taylor and Soul Saving Church of God filed a notice of appeal on January 5,

[3] Although Taylor and Soul Saving Church of God filed a "motion for reconsideration" on November 18, 2016, that motion did not seek to revise the court's dismissal of the case. The November 18 motion was solely concerned with the court's denial of the Motion to Amend. The appellants did not actually challenge the court's judgment until December 1, when they filed their second motion for reconsideration. The November 18 motion was not, therefore, a motion cognizable under Maryland Rule 2-535.

2017, more than a month after the December 10, 2016 deadline. The propriety of the underlying judgment, therefore, is not before us.[4]

On appeal from the denial of a motion for reconsideration pursuant to Maryland Rule 2-535, "the applicable standard is whether the court abused its discretion." *Wormwood*, *supra*, 124 Md. App. at 700, *cited by Hossainkhail*, *supra*, 143 Md. App. at 723-24. Under this standard, "[w]e will not reverse the judgment of the hearing judge unless there is grave reason for doing so." *Hossainkhail*, *supra*, 143 Md. App. at 724 (citing *Northwestern Nat. Ins. Co. v. Samuel R. Rosoff, Ltd.*, 195 Md. 421, 434 (1950)). "The real question is whether justice has not been done, and our review of the exercise of a court's discretion will be guided by that concept." *Wormwood*, *supra*, 124 Md. App. at 700-01 (citations omitted).

DISCUSSION

Taylor and Soul Saving Church of God argue that the circuit court abused its discretion in dismissing their case with prejudice. Barbosa and ERB Properties respond that dismissal was warranted because the appellants' failure to appear was willful, contumacious, and prejudicial. Our review of the record reveals that (1) the trial had been

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[4] It also follows that the circuit court's denial of the November 18 motion is beyond the scope of our review. To be sure, an appeal from a final judgment would ordinarily expose all prior interlocutory orders to appellate review. *Davis v. Attorney Gen.*, 187 Md. App. 110, 122 (2009); Md. Rule 8-131(d). As we have explained, Taylor and Soul Saving Church of God waived the right to seek review of the underlying judgment by failing to note their appeal within the thirty-day period. The scope of our review is limited, therefore, to the circuit court's denial of their Rule 2-535 motion. *See Furda*, *supra*, 193 Md. App. at 377 n.1.

scheduled over six months in advance; (2) the trial judge mentioned the trial date in a memorandum opinion issued a few weeks before the trial; and (3) the case had been pending for over a year. In light of these facts, we cannot say that the circuit court abused its discretion in declining to revise its judgment.

In *Zdravkovich v. Siegert*, 151 Md. App. 295 (2003), we considered whether a trial court had abused its discretion in dismissing a plaintiff's case with prejudice after the plaintiff failed to appear for trial. In that case, the plaintiff filed a motion for continuance five days before trial, and the motion was denied. *Id.* at 300. On the day of the trial, the plaintiff filed a motion for reconsideration, which was also denied. *Id.* at 301-02. The circuit court proceeded to call the case for trial on the merits. *Id.* at 302. When the plaintiff failed to appear, one of the defendants moved for dismissal, and the court dismissed the case with prejudice. *Id.* Notably, the trial court dismissed the plaintiff's claims against all defendants, even though only one of the defendants was present. *Id.*

On appeal, we held that the circuit court had not abused its discretion. *Id.* at 306. After reviewing the Maryland Rules and the relevant case law, we concluded that a trial court has the inherent power to dismiss a plaintiff's case *sua sponte* when the plaintiff fails to appear for trial. *Id.* at 306-08. We located this power not in any particular Maryland Rule, but in the court's "obligation to manage [its] docket and prevent cases from remaining unresolved indefinitely." *Id.*; *see also id.* at 307 n.12 (noting that the case "does not fit squarely" into the categories governed by Maryland Rule 2-506 and 2-507).

In concluding that the circuit court had not abused its discretion, we emphasized that the plaintiff had knowingly delayed an already lingering case:

> Appellant failed to appear for the trial on the merits, which had been scheduled six months before the trial date. In addition, the case had been on the court's docket for over a year at the time of trial. Moreover, appellant knew a day before the trial date that the court had denied his request for a postponement and that he was expected to appear for trial the next day.

Id. at 308-09. We distinguished these circumstances from a prior case, *Tavakoli-Nouri v. Mitchell*, 104 Md. App. 704 (1995), in which we held that a trial court had abused its discretion in dismissing a plaintiff's case for failure to appear. In *Tavakoli-Nouri*, the plaintiff "was hospitalized in Iran at the time of the conference and had not even known of the conference until three days before it was scheduled." *Zdravkovich*, *supra*, 151 Md. App. at 308. We noted that the plaintiff's case "was only six months old" and that his actions demonstrated that he "was serious about pursuing his case." *Id.*

Tuning to the case at hand, we find that the circumstances here are remarkably similar to those in *Zdravkovich*. The trial date was set on April 14, 2016, giving Taylor and Soul Saving Church of God over six months' advance notice. A few weeks before the trial date, the circuit court denied the appellants' motion to amend the scheduling order and reiterated in its memorandum opinion that the trial date was November 10, 2016. When that date arrived, the case had been lingering for more than a year.[5] In these circumstances, Taylor and Soul Saving Church of God knew -- or should have known -- that they were expected to appear in court on November 10, 2016.[6] More broadly, the circuit court might

[5] The first docket entry for the case is dated October 28, 2015.

[6] Notably, Taylor and Soul Saving Church of God do not claim that their counsel failed to apprise them of the trial date.

have reasonably questioned whether the appellants were serious about pursuing their claims, given their repeated attempts to change the nature of the action, add new parties, reset the schedule, and obtain a dismissal without prejudice.[7]

In support of their argument, Taylor and Soul Saving Church of God cite the following passage from *In re Darryl D.*:

> Generally, although not universally, cases in which reviewing courts upheld dismissals based upon tardiness or failure to appear have involved more than a single dereliction or the dismissal was without prejudice.

308 Md. 475, 484-85 (1987). This statement, however, must be understood in context. In *In re Darryl D.*, the Court of Appeals held that a juvenile court had abused its decision in dismissing a delinquency petition after the assistant state's attorney was nearly three hours late to a hearing. *Id.* at 476-77. The Court of Appeals acknowledged that there was no Maryland case "directly on point." *Id.* at 480. The Court was guided, however, by "the special goals of juvenile proceedings," including "the child's best interests and the protection of the public interest." *Id.* Critically, the statement quoted by the appellants is a summary of case law from other jurisdictions; the Court of Appeals was *not* referring to Maryland cases. *Id.*

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[7] Although we need not decide whether the failure to appear was, in fact, deliberate, the appellants appear to admit as much in their own brief, stating that they "did not appear for the trial where [they] would essentially be put in a position to defend [their] claim against a fraudulent document, instead of presenting [their] case." The appellants also attempt to justify their failure to appear by arguing that they were "put in an impossible position" by the court's denial of the Motion to Amend.

Unlike the Court of Appeals in *In re Darryl D.*, we have the considered guidance of a Maryland case -- *Zdravkovich* -- that is directly on point. Indeed, the whole discussion of dismissal in *In re Darryl D.* must be read in light of our subsequent holding in *Zdravkovich*, which affirmed the inherent authority of a trial court to dismiss a plaintiff's case for failure to appear. Furthermore, the factual and legal considerations in the case *sub judice* are very different than those in *In re Darryl D.* Taylor and Soul Saving Church of God were not merely late to their trial; they failed to appear completely. More importantly, the "special goals of juvenile proceedings" that weighed against dismissal in *In re Darryl D.* do not apply here. We conclude, therefore, that the appellants' reliance on *In re Darryl D.* is misplaced.

Taylor and Soul Saving Church of God contend that they were "put in an impossible position by the trial court's decision to conduct a trial with a document that is fraudulent on its face." Even if this were true, a party is not excused from appearing in court at the appointed time simply because she disagrees with the court's prior decisions. Taylor and Soul Saving Church of God also assert that "[t]o uphold this dismissal with prejudice, the Court has to find that there is no error in the trial court's ruling on the Appellant's motion to amend to add other defendant [sic] or dismissal without prejudice." We disagree. As we explain *supra*, the scope of our review in this case is limited due to the timing of the appeal; we can only decide whether the circuit court abused its discretion in declining to revise its judgment dismissing the case with prejudice.

Taylor and Soul Saving Church of God failed to appear for a trial that had been scheduled for over six months, in a case that had been lingering for over a year, even though

the circuit court referenced the trial date in a memorandum opinion issued shortly before the trial. Under these circumstances, there is no "grave reason" for reversing the circuit court's decision. Accordingly, we hold that the circuit court did not abuse its discretion in declining to revise its judgment dismissing the case with prejudice.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.