Circuit Court for Montgomery County
Case No. 398855-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2328

September Term, 2016

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AARON J. WALKER, ESQ.

v.

STATE OF MARYLAND, ET AL.

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

JJ.

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Opinion by Nazarian, J.

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Filed: July 13, 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.

At issue in this appeal are (1) the dismissal of Aaron Walker's request for a declaration that the harassment and electronic harassment statutes at Md. Code Ann., Criminal Law ("CL") § 3-803 and § 3-805 (known as "Grace's Law") are unconstitutional and (2) the entry of judgment against Mr. Walker, after a bench trial, on his malicious prosecution claim against two individual defendants, Brett and Tetyana Kimberlin. Mr. and Ms. Kimberlin raise several other issues in a cross-appeal, including whether the circuit court erred in entering an order sealing certain documents in the record below. We affirm the dismissal, the entry of judgment, and the other orders and decisions challenged by the parties, except the order to seal, which we vacate.

## I. BACKGROUND

Messrs. Walker and Kimberlin have battled in Maryland and other jurisdictions for years. *See, e.g.*, *Kimberlin v. Walker*, Case Nos. 1553 & 2099, Sept. Term 2014 and Case No. 0365, Sept. Term 2015 (consol.), slip op. (Feb. 2, 2016) (available at 2016 WL 392409). Their disputes are many and deeply felt and recounted at length on the internet, and we will not attempt to recount their history or their substance beyond what we need to resolve this appeal.

On January 7, 2015, Mr. Walker filed suit against the State of Maryland, the Attorney General of Maryland, and the District Court of Maryland for Montgomery County. Mr. and Ms. Kimberlin were named as defendants later, in the second amended complaint filed on June 25, 2015. The Kimberlins moved to dismiss, and in October 2015, the circuit court *sua sponte* dismissed the attorney general and the district court. The State

of Maryland and Mr. and Ms. Kimberlin, who were (and are) also *pro se*, were the only defendants who remained in the case. In September 2015, Mr. Walker filed a third amended complaint, which is the operative complaint with respect to the State of Maryland. In November 2015, Mr. Walker filed a fourth amended complaint, which is the operative complaint with respect to Mr. and Ms. Kimberlin. That complaint alleged malicious use of process and malicious prosecution in Count 1 and sought injunctive relief in Count 2.

As to the State, Mr. Walker sought a declaration that CL § 3-803 and § 3-805 are unconstitutional,[1] and that, with respect to CL § 3-803 and § 3-805(b)(2), *Galloway v. State*, 365 Md. 599 (2001) should be overruled. The complaint alleges that charges filed in the past and the potential threat of future charges chill his peaceable expression:

> Mr. Walker has been irreparably harmed by the existence and continued threatened enforcement of §3-803 and §3-805. He has been criminally charged with violating these statutes and found in peace order proceedings to have violated these statutes even though he has engaged in peaceable expression and legal advocacy protected by the First Amendment of the U.S. Constitution and Articles 10 and 40 of the Maryland Declaration of Rights. The continuing existence of these statutes creates a chilling effect upon [him], and the past prosecution has taken [him] away from other activities—such as being an attorney for paying clients.

The past prosecutions giving rise to Mr. Walker's declaratory judgment claim included criminal charges filed and peace orders—all later dismissed or reversed—growing out of

[1] The Third Amended Complaint cited to "Cts. & Jud. Proc." in the declaratory judgment claim (Count V); the State does not dispute that the challenged sections of the Maryland Code appear instead in the Criminal Law Article.

interactions with Mr. Kimberlin. Mr. Walker did not allege that the State has threatened him with prosecution in the future.

The State moved to dismiss, and the court heard arguments at a November 6, 2015 hearing. Then, both orally on the record at the hearing and in a written order entered on November 20, 2015, the court granted the State's motion to dismiss on the ground that Mr. Walker lacked standing to seek a declaration on the constitutionality of CL § 3-803 and § 3-805. In the alternative, the court also concluded that "assuming the Plaintiff did have standing §3-803 and §3-805 of the Criminal Law Article of the Maryland Code do not violate the Maryland and Federal Constitution as outlined in the Plaintiff's Third Amended Complaint."

The case continued with respect to the Kimberlins. The malicious use of process claim was dismissed with prejudice and is not at issue in this appeal. The malicious prosecution claim proceeded to a jury trial on October 11–14, 2016. The claim was grounded in two applications for statement of charges the Kimberlins filed in the District Court of Maryland for Montgomery County that resulted in criminal charges being filed against Mr. Walker. The first charge, harassment under CL § 3-803, arose from Mr. Kimberlin's July 30, 2013 application. The second charge, electronic harassment under CL § 3-805, arose from Mr. and Ms. Kimberlin's May 18, 2015 application. It is undisputed that the State *nolle prossed* both sets of charges.[2]

[2] "*Nolle prosequi*" is defined in Md. Code Ann., Crim. Proc. ("CP") § 1-101(k) as "a formal entry on the record by the State that declares the State's intention not to prosecute a charge."

After the close of evidence at trial, the parties and the court agreed, following *Montgomery Ward v. Wilson*, 339 Md. 701 (1995), that the jury would make certain factual findings with respect to the probable cause element of the malicious prosecution claim, and, based on those findings, the court would decide whether probable cause supported the charges. The court prepared a special verdict form for the jury to indicate whether Mr. and Ms. Kimberlin had made false statements or had failed to disclose material information in their applications for statement of charges. For the July 2013 application that Mr. Kimberlin filed, the jury identified one false statement ("He [Mr. Walker] has written hundreds of posts and tweets about me [Mr. Kimberlin] falsely accusing me of crimes such as…perjury…[and] rape…" (ellipses in original)) and one omission (Mr. Kimberlin "withheld that his wife was offered a defense fund and pro bono legal help [by Mr. Walker]"). For the May 2015 application that Mr. and Ms. Kimberlin filed, the jury identified one false statement ("…sending him [Mr. Kimberlin] to the hospital" (ellipses in original)) and one omission ("a defense fund and pro bono legal counsel.").

Even so, the circuit court found the evidence sufficient to support a finding of probable cause with respect to both applications:

> The jury found that the false statements consisted of: (1) alleging that Walker had falsely accused Kimberlin of committing the crimes of perjury and rape and (2) falsely accusing Walker of sending Kimberlin to the hospital by virtue of an assault Walker had earlier committed on Kimberlin. The jury further found that the Defendants failed to disclose material information in their Application for Statement of Charges. Specifically, Mr. Walker represented Tetyana Kimberlin as a lawyer on a *pro bono* basis and a legal defense fund was established originally with her consent. The Court,

> having reviewed the jury's special verdict, concluded that, those statements notwithstanding, there was sufficient probable cause to issue the charging documents in both cases.

Mr. Walker filed a motion for a new trial, arguing that the court had erred in making evidentiary rulings during trial. The court denied the motion in a memorandum opinion and order. Mr. and Ms. Kimberlin filed a motion to amend the judgment, citing discrepancies between the special verdict form and the court's written judgment. The court denied that motion in a one-line order.

Mr. Walker timely appealed, and the Kimberlins filed a timely cross-appeal. Additional facts will be supplied as necessary below.

## II. DISCUSSION

Mr. Walker raises five issues in his appeal,[3] and the Kimberlins restate those issues

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[3] Mr. Walker states the Questions Presented as follows:

> 1. Whether the Circuit Court erred in holding that Mr. Walker lacked standing to challenge the constitutionality of MD CODE Crim. L. §3-803 and §3-805.
>
> 2. Whether those statutes are impermissible content-based restrictions on freedom of expression in violation of [the] First Amendment to the U.S. Constitution.
>
> 3. Whether those statutes are unconstitutional under the "dormant" Federal Commerce Clause to the extent that they apply to the Internet.
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> 4. Whether the lower court erred by excluding as irrelevant evidence that tended to show that statements in the Kimberlins' applications for Statement of Charges were knowingly false or misleading.
>
> 5. Whether the lower court erred by issuing a Judgment at odds with the findings of the jury.

and raise several additional issues in their cross-appeal.[4] The State reframed the issues that relate to it.[5] In our view, the issues raised by Mr. Walker and the State collapse into two

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[4] Mr. and Ms. Kimberlin state the questions presented as follows:

> I. Whether Maryland's Victims' Protection Statutes, 3-803 And 3-805(b)(2) Are Constitutional
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> II. Whether Appellees, as Victims Who Reported Crimes And Child Abuse, Are Immune From Civil Suit, And Whether The Litigation Privilege Protects Them From Civil Suit When Appellant Merely Argued That Their Statements Were False
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> III. Whether, under *Carter v. Aramark*, 835 A.2d 262 (Md. 2003), The Lower Court Should Have Granted Summary Judgment On The Issue Of Probable Cause
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> IV. Whether A Court Can Seal Court Filings Without Complying With Maryland Rule 16-190
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> V. Whether Maryland Rule 2-603 Requires A Trial Court To Grant Costs To The Prevailing Party
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> VI. Whether The Trial Court Can Issue A Judgment That Is Contrary To The Jury's Verdict
>
> VII. Whether The Trial Court Erred In Prohibiting Appellees From Introducing Relevant Evidence

[5] The State sets forth the questions presented as follows:

> 1. Was the circuit court's dismissal of the plaintiff's complaint against the State properly granted on the basis that the State of Maryland has not waived its sovereign immunity from suit for declaratory judgment actions?
>
> 2. Did the circuit court properly dismiss the plaintiff's complaint challenging the constitutionality of a criminal statute for lack of standing, when the plaintiff was not currently being prosecuted under the criminal statute and faced no realistic threat of prosecution?
>
> 3. Did the circuit court correctly determine that §§ 3-803 and 3-805(b)(1) and (b)(2) of the Criminal Law Article were constitutional because the statutes, which criminalize courses of conduct that have the intent and effect of harassing others,

questions: (1) whether the circuit court erred in dismissing the declaratory judgment claim against the State of Maryland, and (2) whether the circuit court erred in entering judgment against Mr. Walker. We address those questions immediately below in Sections A and B, then move to the issues raised by Mr. and Ms. Kimberlin in Section C.

**A. No Justiciable Controversy Exists Between Mr. Walker And The State Of Maryland.**

The State moved to dismiss in part on the ground that Mr. Walker lacked standing to seek a declaratory judgment holding CL § 3-803 and § 3-805 unconstitutional because he was neither charged under either statute nor faced threat of prosecution at the time the complaint was filed. The circuit court agreed and dismissed Count V. When reviewing a dismissal for failure to state a claim upon which relief can be granted, "we must determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Schisler v. State*, 177 Md. App. 731, 743 (2007) (citations omitted). As in the trial court, "we accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Converge Servs. Grp. v. Curran*, 383 Md. 462, 475 (2004). "The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (2010).

Mr. Walker's declaratory judgment claim against the State is based on two distinct sets of allegations, and the difference will be important as we analyze justiciability. *First*,

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do not violate the First Amendment or the dormant Commerce Clause?

Mr. Walker alleges that the continued existence of the statutes under which the criminal charges and peace orders entered against him *in the past* "creates a chilling effect upon [him]" in violation of his rights under the First Amendment of the U.S. Constitution and Articles 10 and 40 of the Maryland Declaration of Rights. He doesn't allege, and cannot, that he was ever convicted of, or prosecuted for, the criminal charges brought under CL § 3-803 and § 3-805 because the State entered *nolle prosequis*. And he acknowledges, as he must, that both peace orders were dismissed or reversed.

*Second*, Mr. Walker alleges that the "continued threatened enforcement of §3-803 and §3-805" *in the future* creates a "chilling" effect on his free speech rights. He doesn't allege that the *State* has threatened to enforce CL § 3-803 or § 3-805 against him. Instead, he alleges—or at least argues that he alleged—that he is subject to future enforcement under those sections based on threats by *the Kimberlins* to file additional applications for statement of charges or to seek additional peace orders. But the only allegation that Mr. Walker identifies in the 41-page operative complaint to support that argument contains no threats of future action. That allegation, and the sections that follow it, refers only to the *past* activities of Mr. Kimberlin (and not at all to Ms. Kimberlin):

> [Mr. Kimberlin] demanded that Mr. Walker take down all posts discussing him and his criminal conduct and threatened to file false criminal charges, false peace order petitions, and false bar complaints against Mr. Walker if he refused. When Mr. Walker didn't give in to those overt threats, Mr. Kimberlin set out to do exactly what he threatened.

The paragraphs that follow go on to recount Mr. Kimberlin's activities in the past.

Allegations of past activity present slightly different justiciability problems than allegations of future activity. We start with the principle that courts don't decide constitutional questions in an action for declaratory relief without a justiciable controversy between the parties. *State v. G & C Gulf, Inc.*, 442 Md. 716, 718 (2015). "Issues of justiciability may encompass unripe and moot controversies, abstract or hypothetical disputes, collusive lawsuits and claims by disinterested plaintiffs." *Id.* (citations omitted). But "[t]he rationale for the [standing] doctrine is that 'addressing non-justiciable issues would place courts in the position of rendering purely advisory opinions, a long forbidden practice in this State.'" *Id.* at 718–19 (quoting *State Center, LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 491 (2014)); *Hatt v. Anderson*, 297 Md. 42, 46 (1983) ("That a justiciable issue is a prerequisite to a declaratory judgment action is an especially important principle in cases seeking to adjudicate constitutional rights; in such instances we ordinarily require concrete and specific issues to be raised in actual cases, rather than as theoretical or abstract propositions.").

Standing "is an element of the larger question of justiciability and is designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present a court with a dispute that is capable of judicial resolution." *Kendall v. Howard Cty.*, 431 Md. 590, 603 (2013) (quotations and citations omitted). Put another way, when determining whether a party has standing, we look at "whether the plaintiff has shown that he or she is entitled to invoke the judicial process in a particular instance." *State Ctr.*, 438 Md. at 502 (cleaned up).

Now to Mr. Walker's allegations. *First*, to the extent that he grounded his claim in criminal charges filed and peace orders entered against him in the past, he didn't have standing to challenge the constitutionality of those statutes later. Once the charges vanished, either through *nolle prosses* or dismissals, he lacked "a sufficiently cognizable stake in the outcome" of this case. *Kendall*, 431 Md. at 603.[6]

*Second*, to the extent that Mr. Walker based his claim on threats of criminal prosecution under CL § 3-803 and § 3-805 in the future, the claim is not ripe. "[T]he general rule is that equity will not interfere to prevent the enforcement of a criminal statute even though unconstitutional. The mere existence of a criminal statute is not such a threat as to present a justiciable controversy." *G&C Gulf*, 442 Md. at 732 (quoting *Hammond v. Lancaster*, 194 Md. 462, 473–74 (1950) (citations omitted)). Mr. Walker did not allege that the State has threatened prosecution of him under CL § 3-803 and § 3-805. He relies here

[6] For what it's worth, any claims flowing from past charges would be moot even if he did have standing. Even if we were to assume (without deciding) that he had suffered an injury from the mere fact of the past charges *and* that the charges and peace orders were improperly brought and issued, there would be no effective remedy we could provide him—the charges would be gone. *News Am. Div., Hearst Corp. v. State*, 294 Md. 30, 38 (1982) (question whether free speech rights were violated was moot where gag order was no longer in effect). And any decision about whether and to what extent his free speech rights had been violated by the application of CL § 3-803 and § 3-805 "would produce an opinion on an abstract proposition, which this Court does not sit to express." *Id.* Nor would such a claim "fall within the exception to the mootness rule under which an opinion may be rendered" in cases in which there is "urgency" in "establishing a rule of future conduct in matters of important public concern." *Id.* (cleaned up). A decision on the merits here would, by definition, "turn on the peculiar facts of the instant case," *id.* at 39— the long-standing and entirely *sui generis* feud between Mr. Walker and the Kimberlins—and would not, given what we know about their litigation history, qualify as capable of repetition but evading review.

on purported threats by *Mr. or Ms. Kimberlin* to file another application for charges or to seek additional peace orders. But no such allegations appeared in his complaint. And even if we were to read the complaint liberally enough to interpolate such allegations (a reading that would stretch liberality), any claim for relief would not be ripe. *See Hatt*, 297 Md. at 47 (dismissing a firefighter's declaratory judgment action with respect to regulations for ripeness because "at most, [the firefighter] speculates as to what might happen under the regulation if he criticizes his superior officers").

*Dombrowski v. Pfister*, 380 U.S. 479 (1965), doesn't help either. In that case, a civil rights organization and several individual members of its leadership sought to enjoin the State of Louisiana and state actors from enforcing against them state laws against communist activities. *Id.* at 482. The organization claimed that the State had engaged in a concerted plan to charge—but not actually convict—the organization and its leaders in retaliation for their mission to pursue civil rights for African-Americans in the South. *Id.* The Court held that they had standing in federal court to pursue an injunction against the state's actions because there was no realistic prospect of final state adjudication on the criminal charges, and thus no way for them to raise their constitutional defenses to those charges. *Id.* at 487–89. The situation here is far different. As an initial matter, Mr. Walker does not allege anything like the concerted plan by state officials to intimidate the plaintiffs in *Dombrowski*—he states only a generalized fear of prosecution, and doesn't even allege a threat of prosecution by the State. Nor does this case involve, as *Dombrowski* did,

"important questions concerning federal injunctions against state criminal prosecutions threatening constitutionally protected expression." *Id.* at 483.

Because no justiciable controversy exists between Mr. Walker and the State, the circuit court dismissed his claim correctly.[7]

**B. The Circuit Court Did Not Err In Entering Judgment Against Mr. Walker And In Favor Of The Kimberlins.**

Mr. Walker also challenges the entry of judgment in favor of the Kimberlins on his malicious prosecution claim. He argues that he is entitled to a new trial because the circuit court prevented him from "go[ing] line-by-line through each Application and tell[ing] the jury what was false in it or misleading."

We review a trial court's decision to admit or exclude evidence for abuse of discretion. *Gasper v. Ruffin Hotel Corp. of Md., Inc.*, 183 Md. App. 211, 224 (2008). A trial court doesn't abuse its discretion, though, simply because we disagree with the decision—an abuse of discretion occurs

[7] In addition to arguing that Mr. Walker lacks standing, the State also argues on appeal that Mr. Walker's claim was properly dismissed because the State has, and hasn't waived, sovereign immunity from declaratory judgment actions such as this. But the procedural history of this question is more convoluted than the case as a whole—it is far from clear, for example, whether the State raised it in the circuit court and on whose behalf or whether the circuit court considered it—and neither party addresses this history fully in their appellate briefs. Because the circuit court properly dismissed the State on other, independently sufficient grounds, we need not untangle the procedural history or address whether sovereign immunity was (or needs to be) raised. Our handling of this issue in this case should not, however, be read to suggest that the State or Attorney General or District Court lack sovereign immunity or that it can be waived—only that we don't need to decide whether sovereign immunity should serve as the belt or the suspenders holding up our decision to affirm.

> where no reasonable person would take the view adopted by the trial court, when the court acts without reference to any guiding rules or principles or rules on untenable grounds, and where the ruling does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.

*B-Line Med., LLC v. Interactive Digital Solutions, Inc.*, 209 Md. App. 22, 45 (2012) (quoting *Abrishamian v. Barbely*, 188 Md. App. 334, 342 (2009)).

The circuit court does appear to have precluded Mr. Walker during his case-in-chief from introducing evidence relating to each and every allegation in the applications for statement of charges. Even so, we find that the court's management of the evidentiary presentation to the jury fell well within its discretion.

Mr. Walker points to a mid-trial discussion between the court and the parties about the Court of Appeals's decision in *Montgomery Ward v. Wilson*, 339 Md. 701 (1995). In that case, the Court held that in a trial of a malicious prosecution claim, the jury makes factual findings about the existence of probable cause and the trial court makes the legal determination, based on those findings, whether probable cause existed.[8] *Id.* at 716. Mr. Walker argues that the circuit court did not understand the law, as set forth in

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[8] The elements of the tort of malicious prosecution are:

> 1) the defendant(s) instituted a criminal proceeding against the plaintiff; 2) the criminal proceeding was resolved in favor of the plaintiff; 3) the defendant(s) instituted the criminal proceeding without probable cause; and 4) the defendant(s) acted with malice or for the primary purpose other than bringing the plaintiff to justice.

*Southern Mgt. Corp. v. Taha*, 378 Md. 461, 479 (2003) (citations omitted).

*Montgomery Ward*, at the time it made its evidentiary ruling, and wrongly precluded him from presenting the evidence that, he asserts, the jury needed in order to make the factual findings specified on the special verdict form.

In a thoughtful memorandum opinion disposing of Mr. Walker's motion for a new trial (in which Mr. Walker made the identical argument), the circuit court acknowledged that it "did not at first recall that [a special] verdict was required in cases of malicious prosecution," but that "after reading the authority cited by the parties, the Court agreed a special verdict was necessary." But it does not follow automatically from its candid self-assessment that the circuit court erred in its earlier rulings. As the court went on to explain, those decisions remained appropriate in light of the parties' respective burdens of proof and production.[9] As the plaintiff, Mr. Walker bore the initial burden to make a *prima facie* showing that there was no probable cause for Mr. or Ms. Kimberlin to bring charges for harassment or electronic harassment. To meet that burden, Mr. Walker could have offered his testimony denying that he had harassed Mr. Kimberlin (May 2013 application) or the Kimberlins' daughter (July 2015 application). Then, "by denying that he harassed Mr. Kimberlin, and [the daughter], the burden of **producing evidence** shifted to the Defendants

[9] Mr. Walker did not reference in his briefs or include in the record extract his motion for a new trial or the circuit court's memorandum opinion denying that motion. His failure to do so is a violation of Md. Rule 8-501(c) ("The record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal . . . ."). Although we opt not to do so in this instance, we note—as we also do below with respect to Mr. and Ms. Kimberlin's Rule violations—that violations of the Rules such as these can result in dismissal of the appeal. Md. Rule 8-504(c).

to explain precisely what they claimed he did to harass them." (emphasis in original) And then the court found that the recitation Mr. Walker sought to offer wasn't relevant:

> By proceeding in this fashion, Mr. Walker could find out precisely what Mr. Kimberlin was claiming constituted the harassment arising out of their three and a half years of contact. Then Mr. Walker could address those particular acts in detail. ***However, it was totally unnecessary and irrelevant for Mr. Walker to talk about hundreds of blogs that he may have posted about Mr. Kimberlin over the years unless Mr. or Mrs. Kimberlin maintained that one or more of those blogs constituted harassment.***
>
> The trial thereafter proceeded in that fashion. . . . ***[Mr. Walker] was given ample opportunity to address every specific allegation concerning the Defendants' claims*** of harassment and malicious use of an interactive computer service to cause mental distress to the Defendants' daughter.

(Emphasis added.) The court's characterizations of its ruling and the course of the trial following that ruling is consistent with its comments during trial and the testimony in the trial transcript. And—significantly—Mr. Walker identifies no place in the record where the circuit court precluded him from introducing evidence that would have rebutted Mr. and Ms. Kimberlin's specific claims of harassment after the discussion about *Montgomery Ward*. In short, the court made no error of law and did not abuse its discretion by excluding the irrelevant evidence Mr. Walker sought to offer.[10]

[10] Mr. Walker also argues that the circuit court "erred when it issued a judgment at odds with the jury's verdict." He does not argue that the court erred in entering judgment against him—his position is that the *wording* of the judgment does not match the wording of the question on the special verdict form on which the jury wrote in its findings. But the only difference Mr. Walker identifies is that where the judgment states "the jury concluded . . . that in seeking a statement of charges against Mr. Walker . . . the Defendants made certain false statements . . . ," the special verdict form asked the jury to indicate whether the defendants had made statements which they "knew" to be false. Mr. Walker asks us to

### C. Kimberlin Appeal

Mr. and Ms. Kimberlin raise eight issues in their brief.[11] We can dispose quickly of four. *First*, as discussed above, because there was no justiciable controversy with respect to the constitutionality of CL §§ 3-803 and 3-805, we need not address Mr. and Ms. Kimberlin's arguments about those statutes. *Second*, *third*, and *fourth*, because judgment was entered in their favor, and we are affirming that judgment, the questions they raise with respect to their immunity from suit, the denial of their motion for summary judgment, and the exclusion of evidence during trial are moot. *See Roane v. Md. Bd. of Physicians*, 213 Md. App. 619, 644–45 (2013) ("A case is moot when there is no longer any existing controversy when the case comes before the Court or when there is no longer an effective remedy the Court could grant.") (quoting *Suter v. Stuckey*, 402 Md. 211, 219, (2007)).

Their remaining questions then boil down to these: Did the circuit court err in (1) sealing certain court filings; (2) denying the Kimberlin's motion for costs; (3) granting Mr. Walker's motion for discovery sanctions; or (4) denying the Kimberlins' motion to correct the judgment? We vacate the court's order to seal and answer the latter three questions in the negative.

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instruct the circuit court "to issue a new judgment that correctly reflects the jury's verdict." But he cites no legal authority in support of his position, and acknowledges he could find none, so we decline to consider it. *Beck v. Mangels*, 100 Md. App. 144, 149 (1994); *Klauenberg v. State*, 355 Md. 528, 551–52 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal."); Md. Rule 8-504(a)(5) (requiring that an appellate brief contain "[a]rgument in support of the party's position").

[11] *See* n. 4.

*First*, Mr. and Ms. Kimberlin argue that the circuit court erred in entering an order sealing certain documents. They don't include a citation to the order in their brief, and only reference the date on which it was entered, January 26, 2017.[12] There is a docket entry on that date that states:

> ORDER OF THE COURT . . . THAT THE COURT GRANTS PLAINTIFF'S ORAL MOTION TO SEAL; THAT THE CLERK OF THE COURT SHALL SEAL THE PLEADINGS AT DKT. NOS. [].

The docket entry contains no reference to a date or docket number of the motion, and the Kimberlins simply represent in their brief that the circuit court judge "said that he would entertain the sealing of the documents during the September 30, 2016 motions hearing, but he did not do so at that time." They fail as well to include a reference to the transcript for the September 2016 hearing, and no transcript appears in the extract, appendix, or record.[13]

Even so, we can see from the face of the record that the January 26, 2017, order to seal doesn't comply with Maryland Rule 16-912 and must be vacated. That rule, which governs the sealing of court records, requires a party seeking a seal to file a motion, serve

[12] Mr. and Ms. Kimberlin attach to their brief what they represent are email exchanges between themselves and the circuit judge's law clerk and Mr. Walker, and concerning this issue. But those documents are not part of the record and we decline to consider them. *Rollins v. Capital Plaza Assoc., L.P.*, 181 Md. App. 188, 199–200 (2008); *see also* Md. Rule 8-413(a).

[13] Indeed, this deficiency highlights a pattern: throughout their appellate briefing, the Kimberlins fail to include references to pages of the record extract (as required by Md. Rule 8-504(a)(4)) and to include parts of the record in the extract necessary to the questions they presented (as required by Md. Rule 8-501(c)). Once again, we will not exercise our discretion to do so in this instance—it is generally preferable to reach the merits of a case, where possible—but we note that the consequence of a party's failure to comply with the Rules is dismissal of its appeal. Md. Rule 8-504(c).

that motion on all parties and on "each identifiable person who is the subject of the case record." Maryland Rule 16-912(a)(2)(B). The rule then requires the court to offer the opportunity for a full adversary hearing, and enter a final order that "include[s] findings regarding the interest sought to be protected by the order," and that "shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected by the order." Maryland Rule 16-912(d). None of those steps occurred here, and the sealing order must therefore be vacated. *See Sumpter v. Sumpter*, 427 Md. 668, 681–82 (2012). Mr. Walker is welcome to file a motion to seal in accordance with the Rules.

*Second*, Mr. and Ms. Kimberlin argue that the circuit court erred in denying their "Verified Motion for Costs," which sought reimbursement for deposition transcripts, hearing transcripts, videographer fees, the "cost of plaintiff's failure to appear for deposition on July 23, 2016," and "35 Green Certified Cards at average cost of $7.00 each, which includes certification, return green card and postage." The circuit court denied the motion in a one-line order and without explanation. But the Kimberlins provide no reason, and cite no legal authority, in support of their position that the circuit court erred in entering that order. They point to Maryland Rule 2-603, and particularly to subsection (a), which provides that "[u]nless otherwise provided by rule, law or order of court, the prevailing party is entitled to costs." But subsection (b)(1) goes on to identify the costs that "shall" be assessed: "(A) all fees of the clerk, (B) all fees of the sheriff that have been reported to the clerk by the sheriff or a party . . . ." None of the costs they requested are included in the

category of costs that "shall" be assessed by the clerk, and they offer no argument that the court abused its discretion in declining to include them.

*Third*, Mr. and Ms. Kimberlin argue that the circuit court erred in granting Mr. Walker's motion for sanctions, which sought costs associated with a deposition of Ms. Kimberlin. The circuit court granted Mr. Walker's motion and ordered Ms. Kimberlin to pay Mr. Walker the amount of $187.50 (half of the amount sought by Mr. Walker). We review a court's imposition of sanctions for discovery abuse for abuse of discretion, *Klupt v. Krongard*, 126 Md. App. 179, 192–93 (1999), *declined to extend by* 210 Md. App. 615, and the Kimberlins have not demonstrated that the circuit court abused its discretion. They fail to cite to any part of the record to support their conclusory assertion that sanctions were not warranted. They offer here the same argument here that they made to the circuit court, namely that Ms. Kimberlin had agreed to an audiotaped—but not videotaped—deposition, and that she refused to stay when Mr. Walker insisted on videotaping the deposition. In the life of litigation this lengthy and this contentious, we cannot fault the circuit court for splitting the cost of this particular dispute between the parties.

*Fourth*, and finally, the Kimberlins argue that the circuit court erred by denying their motion to correct the judgment. We review a motion to alter or amend judgment for abuse of discretion. *Helman v. Mendleson*, 138 Md. App. 29, 58 (2001). They assert that the wording in the written judgment is not consistent with the jury's findings on the special verdict form. They argue that (1) the jury's response on the special verdict form states that legal help and a pro bono legal fund were "offered" where the judgment does not, and

(2) the judgment states that the legal fund was established "originally with [Ms. Kimberlin's] consent" where the verdict form does not. To the extent the differences between the judgment and the special verdict form constitute discrepancies, they are not sufficiently significant or substantive to warrant amendment. And even if they were, the Kimberlins have failed to identify any evidence or place in the record that contradicts the judgment as written.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED IN PART AND VACATED IN PART. COSTS TO BE DIVIDED EQUALLY.**