Circuit Court for Carroll County
Case No. 06-C-16-070621

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2421

September Term, 2016

ANTONIO L. BROWN

v.

STATE OF MARYLAND, ET AL.

Woodward, C.J.,
Beachley,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 8, 2018

Antonio L. Brown, appellant, is an inmate at North Branch Correctional Institution. In 2016, he filed a "Motion for Appropriate Relief/Compensation" in the Circuit Court for Carroll County, which was essentially a civil action under the Maryland Public Information Act (MPIA). In that pleading, Brown sought to procure various items from the prosecutor's file in Carroll County case numbers 06-K-01-27770 and 06-K-01-27771. He also requested compensatory and statutory damages, claiming that appellees had acted in bad faith in denying his previous MPIA request for the same information.[1]

The circuit court granted the State of Maryland's motion to dismiss the complaint in July 2016 and granted the remaining appellees' motion to dismiss the complaint on September 9, 2016. Brown filed a motion to alter or amend the judgment on September 22, 2016, which the trial court denied following a hearing. Brown then filed this appeal. Because Brown's motion to alter or amend the judgment was filed more than ten days after the trial court entered its final order dismissing his complaint, that motion did not toll the time for noting an appeal from that judgment. *See* Md. Rule 8–202(c).[2] Consequently, the

[1] Appellees are The State of Maryland; The Office of the State's Attorney for Carroll County; Brian DeLeonard, the current State's Attorney for Carroll County; Jerry Barnes, the former State's Attorney for Carroll County; David Daggett, an Assistant State's Attorney for Carroll County; and Edward Coyne, an Assistant State's Attorney for Carroll County.

[2] In his reply brief, Brown contends, for the first time, that he filed a notice of appeal from the underlying judgment on September 23, 2016, but that it was not accepted by the lower court. In support of this claim, Brown has attached a document titled "Notice of Appeal," that appears to have been file stamped by the Clerk for the Circuit Court for Carroll County on September 30, 2016. The file stamp has been crossed out and, next to the file stamp, someone wrote their initials and "Reject for fees or waiver req." We note that this document does not appear anywhere in the record and nothing in the docket entries

only issue that is properly before us on appeal is whether the circuit court erred in denying Brown's motion to alter or amend the judgment. *Sydnor v. Hathaway*, 228 Md. App. 691, 707-08, *cert. denied*, 450 Md. 442 (2016) ("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." (internal quotation marks and citation omitted)).

Brown raises three issues in his brief, none of which directly address the court's decision to deny his motion to alter or amend the judgment. First, he contends that the circuit court erred in dismissing his underlying complaint on *res judicata* grounds. However, in his motion to alter or amend the judgment, Brown only claimed that the circuit court had erred in not articulating a basis for dismissing his complaint. At the hearing on that motion, the court clarified that it had dismissed his complaint, in part, because it was barred by *res judicata*.[3] After hearing the court's explanation, Brown did not argue that the court had improperly dismissed his complaint on that basis. Because the denial of Brown's motion to alter or amend the judgment is the only order on appeal, and Brown did not raise this issue in that motion, it is not preserved for appellate review.

suggests that a notice of appeal was filed by Brown and later rejected. However, to the extent that Brown is now claiming that he filed a timely notice of appeal from the underlying judgment that was improperly rejected by the circuit court, he must first raise that claim in the circuit court.

[3] The court also indicated that it had dismissed the complaint as being moot, a conclusion that Brown does not challenge on appeal.

Brown next asserts that the circuit court abused its discretion when it declined to grant his motion for an order of default, and instead issued a show cause order, after appellees failed to respond to his complaint within thirty days. But again, this claim was not specifically raised in Brown's written motion to alter or amend the judgment or at the hearing on that motion. Therefore, it is also not preserved for appeal.

Brown's final claim is that the trial court abused its discretion in discharging the show cause order and allowing appellees to file their motion to dismiss his complaint because, he claims, appellees did not provide a valid reason for their failure to respond to his complaint in a timely manner. Specifically, Brown contends that appellees failed to comply with Maryland Rule 2-613(d), which provides that a defendant moving to vacate an order of default must "state the reasons for the failure to plead and the legal and factual basis for the defense to the claim."

Although Brown briefly raised this argument at the hearing on his motion to alter or amend the judgment, it lacks merit. Simply put, because the circuit court never entered an order of default, Maryland Rule 2-613(d) did not apply. Consequently, we cannot say that the circuit court's decision not to vacate its judgment on that basis was

"so far wrong—to wit, so egregiously wrong—as to constitute a clear abuse of discretion."

Stuples v. Baltimore City Police Dep't, 119 Md. App. 221, 232 (1998).[4]

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[4] In any event, we note that appellees did provide a reason for failing to respond to the complaint. Specifically, they claimed that they had not been properly served. Although Brown asserts that service was, in fact, sufficient, "an appeal from the primary judgment itself [was] the proper method for testing . . . the correctness of such a legal ruling." *Hardy v. Metts*, 282 Md. 1, 6 (1978).