Circuit Court for Prince George's County
Case No. CAL-16-27528

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2467

September Term, 2016

HESMAN TALL

v.

RICHCROFT, INC.

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

JJ.

PER CURIAM

Filed: March 6, 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.

On August 30, 2016, Hesman Tall, appellant, proceeding *pro se*, filed a complaint in the Circuit Court for Prince George's County against Richcroft, Inc. ("Richcroft" or appellee). Tall seemed to allege that Richcroft had withheld wages and payments for other expenses as a result of his work as a community skills living assistant ("CSLA"), providing assistance to Doreen Shing ("Doreen"), who required care due to cerebral palsy and seizures. Richcroft responded with a motion to dismiss or, in the alternative, a motion for summary judgment, contending that Tall was not an employee at the times alleged in the complaint. The circuit court granted Richcroft's motion without a hearing and dismissed Tall's complaint with prejudice. On appeal, Tall presents sixteen questions, from which we discern two issues: 1) whether the court erred in denying Tall's motion for default judgment; and 2) whether the court erred in granting Richcroft's motion. For the reasons stated below, we affirm.

Preliminarily, Richcroft urges this Court to strike portions of Tall's record extract – most notably his amended complaint – because the circuit court did not consider this material in its decision. Indeed, this Court has observed that we "'must confine [our] review to the evidence actually before the trial court when it reached its decision.'" *Franklin Credit Mgmt. Corp. v. Nefflen*, 208 Md. App. 712, 724 (2012) (quoting *Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 663 (2010)), *aff'd*, 436 Md. 300 (2013). "Parties to an appeal are 'not entitled to supplement the record[.]'" *Id.* (quoting *Rollins v.*

Capital Plaza Assocs., L.P., 181 Md. App. 188, 200 (2008)). Accordingly, we strike those portions of Tall's record extract that were not part of the record before the circuit court.[1]

Turning to the merits, Tall first contends that the court erred in denying his motion for a default judgment against Richcroft because Richcroft failed to file a timely answer to his complaint. Pursuant to Rule 2-613(b), a plaintiff may request an order of default if "the time for pleading has expired and a defendant has failed to plead as required by these rules[.]" Rule 2-321(a) provides that a defendant, with exceptions inapplicable to this case, has thirty days to file a responsive pleading after being served. In this case, Richcroft was served on October 19, 2016. Accordingly, the deadline to file a responsive pleading was November 18, 2016. On November 17, 2016, Richcroft requested an extension of time to respond to Tall's complaint, and the court granted this motion, giving Richcroft until December 5, 2016, to respond. On December 5, Richcroft filed its motion to dismiss, which is permissible pursuant to Rule 2-322(b).

We, therefore, find no error in the court's denial of Tall's motion for default. Rule 1-204(a)(2) gives courts discretion to "extend the period [of time to respond] if the motion is filed before the expiration of the period originally prescribed or extended by a previous order[.]" *See also Town of New Market v. Frederick Cnty.*, 71 Md. App. 514, 519 (1987). Richcroft's motion for an extension and subsequent motion to dismiss were timely, and the court correctly denied Tall's motion for default judgment.

[1] Specifically, we strike the following pages of the record extract: 1, 7-28, and 120-31.

Tall also contends that the court erred in granting Richcroft's motion to dismiss, or, in the alternative, motion for summary judgment. Because Richcroft presented factual allegations beyond the complaint in its motion, and the trial court did not expressly exclude that material in its decision, we treat the court's order as one granting summary judgment. *See* Rule 2-322(c); *Burns v. Scottish Dev. Co., Inc.*, 141 Md. App. 679, 692 (2001). Our standard of review, therefore, is *de novo*. *See Balt. Cnty. v. Kelly*, 391 Md. 64, 73 (2006). In reviewing a grant of summary judgment, "we must discern whether a genuine dispute of material fact exists and will review the circuit court's legal conclusions for correctness." *Carter v. Aramark Sports & Entm't Servs., Inc.*, 153 Md. App. 210, 224 (2003). Pursuant to Rule 2-501(f), summary judgment is appropriate where there are no disputes of material fact, and the moving party is entitled to judgment as a matter of law. *See Haas v. Lockheed Martin Corp.*, 396 Md. 469, 478-79 (2007).

In his complaint, Tall alleged that he worked as a CSLA for Doreen from November 9, 2014, to July 13, 2015. He states that his hourly wage was $13.25, and he received overtime pay at the rate of $20 per hour. He avers that he was an employee of Richcroft, and that Richcroft did not pay his wages and other expenses from November 9, 2014, to July 13, 2015. In the motion for summary judgment, Richcroft asserted that Tall was an "at will" employee and was employed from September 17, 2014, through October 15, 2014. Richcroft terminated Tall's employment as a result of "outrageous" behavior at a team meeting on October 9, 2014. Furthermore, Richcroft stated that Tall's hourly wage was $12.73, and that Tall had been fully compensated for his period of employment.

In opposition to Richcroft's motion, Tall maintained that Doreen had the ultimate decision as to Tall's employment with Richcroft pursuant to various provisions of state and federal law concerning the receipt of Medicaid funds. Notably, he did not deny that Richcroft had fired him on October 15, 2014. Rather, he contended that the "at will" claim did not "apply" to his complaint. Attached to his opposition was an affidavit from May Shing, Doreen's mother, in which she stated that she had retained Tall's services as a CSLA for Doreen after his termination from Richcroft.

We are, therefore, not persuaded that the court erred in granting summary judgment to Richcroft. Although Richcroft concedes that it receives funding from the Maryland Department of Health through the Developmental Disabilities Administration, it retains authority over the hiring and firing of its employees. Tall did not dispute that Richcroft terminated his employment on October 15, 2014. *See Adler v. Am. Standard Corp.*, 291 Md. 31, 35 (1981) (noting that at will employment contracts "can be legally terminated at the pleasure of either party at any time"). Accordingly, Richcroft cannot be held liable for the wages and other expenses of someone who was not an employee. Furthermore, Tall

did not allege that Richcroft had failed to compensate him during his period of employment. As such, the court properly granted summary judgment to Richcroft.[2]

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

[2] To the extent that Tall contends that Richcroft violated Doreen's rights in failing to respect her choices, he has no standing to assert Doreen's rights. *See Norman v. Borison*, 192 Md. App. 405, 420 (2010) (explaining that party bringing suit must have standing to sue, that is "demonstrat[ion of] an 'injury-in-fact,' or 'an actual legal stake in the matter being adjudicated'" (quoting *Hand v. Mfrs. & Traders Trust Co.*, 405 Md. 375, 399 (2008))), *aff'd*, 418 Md. 630 (2011).