

Circuit Court for Prince George's County
Case No. CAL17-11575

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2524

September Term, 2018

SUSIE TUCKER

v.

JACOB LEE, ET AL.

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 4, 2020

*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.

In this appeal from a civil action in the Circuit Court for Prince George’s County, Susie Tucker, appellant, challenges the court’s award of summary judgment to Jacob Lee and Mid Atlantic Seafood, appellees. For the reasons that follow, we shall affirm the judgment of the circuit court.

In June 2017, Ms. Tucker filed in the circuit court a complaint in which she contended that in January 2017, she slipped and fell while patronizing a restaurant owned by appellees. Ms. Tucker contended that as a result of the fall, she “now suffer[s] chronic neck pain and numbness and pain in [her] hands.” In July 2017, appellees propounded to Ms. Tucker interrogatories and a request for production of documents. In January 2018, appellees filed a motion to compel discovery responses, in which appellees contended that Ms. Tucker had “failed to answer . . . Interrogatories or Request for Production of Documents or requests for same.” The court subsequently granted the motion and ordered Ms. Tucker to “answer the Interrogatories and Request for Production of Documents . . . within ten (10) days.” In May 2018, appellees filed a motion for sanctions, in which appellees contended that Ms. Tucker had “provided unsigned Answers to Interrogatories that did not provide answers to several of the Interrogatories,” and that “no documents or Responses to Request for Production of Documents were produced.” Following a hearing, the court ordered Ms. Tucker to “respond in full to [the] discovery request by August 10, 2018,” or else she would “be precluded from introducing evidence regarding matters which were specifically requested in [the] discovery request and not provided.”

On August 20, 2018, the parties appeared for trial. Appellees moved for summary judgment on the grounds that the medical records provided by Ms. Tucker in response to

the discovery request did not include a “causal relationship statement by any of the doctors” or include any bills, and Ms. Tucker did “not identif[y] an expert to testify on her behalf.” Appellees contended that as a result, Ms. Tucker was “not going to be able to prove causation or damages.” The court noted that the medical records produced by Ms. Tucker were not certified. In response, Ms. Tucker requested “another court date to come back and get . . . everything certified.” Ms. Tucker further stated that she had no bills because she was on “Medical . . . Assistance,” that she “didn’t go to any doctors,” and that she did not “have money to pay an expert.”

The court first sent the case “over to the civil judge,” for resolution of Ms. Tucker’s request for a continuance. After the civil judge denied the request, the court reviewed Ms. Tucker’s medical records and found “[n]o indication that anything . . . states that” her fall was the cause of her injuries. The court further noted that Ms. Tucker did not “have a doctor . . . that could say that” the fall caused her injuries. Finding “no genuine dispute as to the material fact that there was causation,” the court granted appellees summary judgment.

Ms. Tucker contends that the court erred in granting summary judgment for two reasons. First, she contends that she “was not granted a hearing as required by . . . Rule 2-311(f)”¹ (capitalization and boldface omitted), where she “would have had the opportunity to present additional evidence in support of her claim and request more time to provide

¹Rule 2-311(f) states, in pertinent part: “[T]he court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.”

substantial records.” We disagree. Ms. Tucker was required to present evidence in support of her claim during discovery, but, with respect to the issue of causation, failed to do so. The court subsequently gave Ms. Tucker the opportunity to respond to appellees’ contention that she had failed to present any evidence of causation, but she indicated to the court that such evidence, including the presentation of expert testimony, would not be forthcoming. Also, the court expressly gave Ms. Tucker the opportunity to request a continuance. That request was denied, and Ms. Tucker does not challenge the denial of that request on appeal. Hence, the court satisfied Rule 2-311(f) in resolving the motion for summary judgment.

Ms. Tucker next contends that, “because [her] medical records were electronically signed,” the records were admissible pursuant to Md. Code (1974, 2013 Repl. Vol., 2016 Supp.), § 10-104(d)(1) of the Courts and Judicial Proceedings Article (“CJP”), and she “did not need expert witness testimony.” (Capitalization and boldface omitted.) We disagree. It is true that CJP § 10-104(d)(1) states that a “writing or record of a health care provider made to document a medical . . . condition, a health care provider’s opinion, or the providing of health care is admissible without the support of the testimony of a health care provider as the maker or the custodian of the writing or record as evidence of the existence of a medical . . . condition, the opinion, and the necessity and the providing of health care.” But, Rule 5-902(b) states that “[t]estimony of authenticity as a condition precedent to admissibility is not required as to the original or a duplicate of a record of regularly conducted business activity . . . *that has been certified.*” (Emphasis added.) Moreover, even if the medical records were admissible without certification, Ms. Tucker did not

identify during the hearing on the motion for summary judgment, and does not identify now, where in the records there is an opinion that the injuries she suffered were caused by her fall on appellees' property. Hence, the court did not err in granting appellees' motion for summary judgment.

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