

Circuit Court for Prince George's County
Case No. CAL17-11576

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 3049

September Term, 2018

LATANIA BERRYMAN

v.

BOBBY KETTLES, ET AL.

Graeff,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: August 10, 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.

This appeal stems from a discovery violation in the negligence suit between Latania Berryman and Bobby Kettles. We must note at the outset that neither party behaved admirably during the discovery process: Kettles utterly failed to participate in discovery and Berryman jumped to conclusions based on Kettles’s lack of participation and failed to protect herself by filing early motions to compel. Our role, however, is not to evaluate or criticize the parties’ (or their counsels’) discovery failures. Rather, our task is to evaluate the performance of the Circuit Court for Prince George’s County and determine whether its decision to grant a discovery sanction—but less of a sanction than Berryman wanted—constituted an abuse of its discretion. Because it did not, we affirm.

BACKGROUND

In 2016, Berryman and Kettles were involved in a car accident while driving in Upper Marlboro, Maryland. Afterwards, Berryman filed a negligence claim against Kettles.¹ During discovery, Berryman served interrogatories, requests for production of documents, and requests for admissions on Kettles. Kettles did not respond to these requests. Kettles’s attorney later informed Berryman’s attorney that because he was recovering from health issues and was out of state, Kettles would not be available for a deposition.

Berryman subsequently filed a motion for sanctions against Kettles based on his failure to participate in discovery. This motion requested relief in the form of a default

¹ Berryman also filed a breach of contract claim against her insurance company, United States Automobile Association (USAA). That claim, however, is not at issue in this appeal.

judgment against Kettles or, in the alternative, a court order to prevent Kettles from testifying at trial. Judge Beverly J. Woodard for the Circuit Court of Prince George's County denied the motion without comment.

The weekend before trial was scheduled to begin, Kettles submitted his discovery responses to Berryman, including his answers to interrogatories and responses to the requests for admissions. Kettles was also present on the first day of trial. On that first day of trial, Berryman moved for reconsideration of her motion for sanctions, arguing that she had been prejudiced by Kettles's late discovery responses and her inability to depose him. Judge William A. Snoddy ruled that Kettles's discovery violations could be cured by Berryman's choice of one of the following options: (1) Berryman would be allowed to question Kettles in the presence of all attorneys, but not under oath; or (2) Berryman would be allowed to depose Kettles under oath on the evening after the first day of trial. Berryman's attorney selected the first option and, at the end of the first day of trial, interviewed Kettles in a hallway of the courthouse, but this conversation was not recorded and was not under oath.

On the second day of trial, Berryman again moved for sanctions against Kettles based on his discovery failures, but Judge Snoddy ruled that those failures had been cured by the hallway conversation between Kettles, Berryman, and their attorneys. Kettles was then permitted to testify at trial. At the close of trial, the jury found that Kettles was not negligent.

DISCUSSION

As noted, Judge Woodard denied Berryman’s motion for sanctions prior to the start of trial.² On the first day of trial, Judge Snoddy reconsidered the denial of the motion for sanctions and found, if only implicitly, that Kettles’s failure to provide discovery responses and sit for a deposition prior to the start of trial was a discovery violation. Thus, the only question for us to resolve is whether the sanction imposed by Judge Snoddy for the discovery violation was, under these circumstances, an abuse of discretion. *Dackman v. Robinson*, 464 Md. 189, 231 (2019) (“An appellate court reviews for abuse of discretion a trial court’s decision to impose, or not impose, a sanction for a discovery violation.”).

Trial courts have broad discretion when imposing sanctions for discovery violations. *Lowery v. Smithsburg Emergency Med. Serv.*, 173 Md. App. 662, 674 (2007). Once a trial judge determines that a discovery violation has occurred, Maryland Rule 2-433 provides a menu of sanctions ranging from awarding costs and expenses to entering a judgment by default. MD. RULE 2-433; *Klupt v. Krongard*, 126 Md. App. 179, 194 (1999). Here, Judge Snoddy allowed Berryman the choice of whether to conduct an informal interview with Kettles or a full deposition later in the afternoon. Counsel for Berryman did not object to either option and ultimately chose to conduct an informal interview with Kettles at the close of trial that day. Judge Snoddy realized at the time, and we acknowledge here, that

² In her brief, Berryman notes that Judge Woodard denied the motion for sanctions “without explanation.” Judge Woodard, however, was not required to provide an explanation for her denial because “we presume judges to know the law and apply it, even in the absence of a verbal indication of having considered it.” *Wagner v. Wagner*, 109 Md. App. 1, 50 (1996).

neither alternative was a perfect substitute for a full deposition under oath conducted in a timely fashion—but that was no longer a possibility, particularly given that neither party sought a continuance. Offering those choices was, therefore, a reasonable solution to the problem presented and was not an abuse of discretion.³

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

³ Although we hold that the trial court did not abuse its discretion, we additionally note that whatever harm Kettles’s testimony (and Berryman’s alleged inability to mount a sufficient cross-examination) caused to Berryman’s case, it paled in comparison to the harm caused by the testimony of Berryman’s adult daughter, who completely contradicted Berryman’s description of the accident.