

Circuit Court for Baltimore County  
Case No. 03-C-15-4267

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 3068

September Term, 2018

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DANIEL BAHR, *ET AL.*

v.

STEPHEN HUGHES, *ET AL.*

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Berger,  
Nazarian,  
Battaglia, Lynne A.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Nazarian, J.

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Filed: March 9, 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 2012, Daniel and Carol Bahr allege that their neighbors, Steven and Barbara Hughes, removed trees from the Hugheses' property improperly through their agents, Myers Tree Services, Inc. and William Myers (collectively "Myers"), and Shannon T. Bane, Sr. The Bahrs filed two actions in the Circuit Court for Baltimore County to recover damages. The first was dismissed in 2015. The Bahrs filed the second soon after, which in turn was dismissed after a series of procedural missteps and ultimately, the court's determination that the Bahrs acted without diligence.

The Bahrs argue that the court erred in dismissing the second action when it had stayed the case previously, that the "original and proximate cause" of the dismissal was the court's clerical mistake in issuing a notice of contemplated dismissal, and that the court concluded incorrectly that the Bahrs had acted without diligence. We affirm.

## I. BACKGROUND

Both cases arise out of the same operative facts. The Bahrs and the Hugheses owned adjacent properties in Baltimore County. The Hugheses entered into a contract with Myers to remove trees on their property. Myers then asked Mr. Bane to help remove some larger trees. The Bahrs alleged that Myers and Mr. Bane hauled lumber through their property and left debris, cut lumber, and stumps in their wake. They allege further that trees were cut down wrongfully.

The litigation included procedural decisions that frame this appeal. We begin by explaining the timelines for the two cases, then how a confusing notice and misplaced filing complicated things.

**A. The June 20, 2013 Action and April 17, 2015 Action**

On June 20, 2013, the Bahrs filed a complaint against the Hugheses and Myers, then added Mr. Bane as a party later in December 2013.<sup>1</sup> The case progressed for two years; the parties conducted extensive discovery and the Bahrs amended their complaint three times. The Hugheses, Myers, and Mr. Bane filed a motion to strike the Bahrs’ third amended complaint and the court granted that motion on March 31, 2015, which resulted in the case being dismissed. The Bahrs appealed the court’s decision to this Court. We affirmed on February 27, 2018, and the Bahrs filed a petition for a writ of *certiorari* that the Court of Appeals denied on June 21, 2018.

In the meantime, and shortly after the first action was dismissed by the circuit court, the Bahrs filed a new complaint<sup>2</sup> “to preserve their claims against any defense of limitations.”<sup>3</sup> The Hugheses, Myers, and Mr. Bane moved to dismiss the new complaint. In response, on October 25, 2015, the court denied the motion to dismiss and entered an order staying the action “pending resolution of the appeal” in the first action, which was pending before this Court.

**B. Filing Errors**

This is where the story gets complicated. On November 23, 2016, while the stay was in place, the Circuit Court for Baltimore County issued a Notice of Contemplated

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<sup>1</sup> The Civil Action Number for the first action is 03-C-13-007086.

<sup>2</sup> The Civil Action Number for the second action is 03-C-15-004267.

<sup>3</sup> Although not before us, we struggle to understand how a new complaint could have achieved this objective, especially if, as counsel agreed at oral argument, the second complaint was grounded in the same nucleus of operative fact as the first.

Dismissal, *see* Maryland Rule 2-507, in the second action. In response, the Bahrs filed a Motion to Defer Entry of an Order of Dismissal and explained that the second action had been stayed while the appeal in the first action was pending. Unfortunately, the motion’s case caption contained the case number of the first action, so the motion was filed in the record of that case. The court compounded this error by issuing, on January 9, 2017, an order deferring the dismissal *in the first action* for a period of 180 days (which ran in July 2017).

On February 8, 2017, the court dismissed the second action, presumably because the Bahrs had not, so far as the court could tell, responded to the Notice of Contemplated Dismissal. The Bahrs claim that they didn’t learn that the second action was dismissed until about a year and a half later, on August 17, 2018. On August 21st, they filed a Motion to Strike Dismissal Entered in Error, which the Hugheses, Myers, and Mr. Bane opposed.

And now we arrive at the decisions that bear on this appeal. On September 21, 2018, the circuit court denied the Bahrs’ motion to strike the dismissal in the second case, citing their failure to act with diligence after the court dismissed the case. They did not file a notice of appeal immediately. Instead, fourteen days later, on October 5, 2018, the Bahrs filed a Motion to Reconsider and Request for a Hearing, arguing that they didn’t have notice of the dismissal in the second action and that they, in fact, had acted with diligence. The Hugheses, Myers, and Mr. Bane opposed, arguing that the Bahrs were unable “to show by clear and convincing evidence” that they acted diligently and that their motion should be denied. The court denied the Bahrs’ Motion for Reconsideration, in an order whose

operative language we reproduce *verbatim*:

The notice of contemplated dismissal went out on 11.23.16. Notwithstanding [the Bahrs’] unfortunate mistake re the case #, they did not act with reasonable diligence. Judge Cox only deferred dismissal for 6 months (under incorrect #).

To summarize, then, the essential timeline is as follows, with the critical filings in italics:

<b>First Action</b> (June 20, 2013)	<b>Second Action</b> (April 17, 2015)
<ol style="list-style-type: none"><li>1. <b>June 20, 2013</b> – Complaint</li><li>2. <b>Feb. 25, 2015</b> – Hugheses, Myers, and Mr. Bane move to dismiss third amended complaint</li><li>2. <b>Mar. 31, 2015</b> – Circuit court grants motion to dismiss</li><li>3. <b>Apr. 10, 2015</b> – Bahrs appeal to Court of Special Appeals</li><li>4. <b>Nov. 28, 2016</b> – <i>Bahrs move to defer contemplated dismissal</i></li><li>5. <b>Jan. 9, 2017</b> – <i>Order granting Bahrs’ motion to defer for 180 days</i></li><li>6. <b>Feb. 28, 2018</b> – Court of Special Appeals affirms March 31st dismissal</li><li>7. <b>June 21, 2018</b> – Court of Appeals denies <i>certiorari</i></li></ol>	<ol style="list-style-type: none"><li>1. <b>Apr. 17, 2015</b> – Complaint</li><li>2. <b>July 8, 2015</b> – Hugheses, Myers, and Mr. Bane move to dismiss</li><li>3. <b>Oct. 26, 2015</b> – Order denying motion to dismiss and staying case pending “resolution of the appeal” in first action</li><li>4. <b>Nov. 23, 2016</b> – Notice of contemplated dismissal</li><li>5. <b>Feb. 8, 2017</b> – Case dismissed without prejudice</li><li>6. <b>Aug. 21, 2018</b> – Bahrs move to strike dismissal</li><li>7. <b>Sept. 21, 2018</b> – Order denying motion to strike dismissal</li><li>8. <b>Oct. 5, 2018</b> – Bahrs’ motion to reconsider order denying motion to strike dismissal</li><li>9. <b>Nov. 20, 2018</b> – Order denying motion to reconsider</li><li>10. <b>Dec. 14, 2018</b> – Notice of appeal of Sept. 21 and Nov. 20 orders</li></ol>

On December 21, 2018, the Bahrs filed a notice of appeal citing “the Court’s Orders of September 21, 2018 and November 20, 2018.”

## II. DISCUSSION

The Bahrs raise three questions on appeal,<sup>4</sup> but as we explain, only one issue is before us: did the trial court err when it denied the Bahrs’ October 5, 2018 Motion to Reconsider? We review the trial court’s decision for abuse of discretion: “In general, the denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion.” *Nusbaum v. Nusbaum*, 243 Md. App. 653, 665 (2019) (quoting *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010)). An abuse of discretion may occur where a court incorrectly applies the law applicable to the case. *Id.* (quoting *Arrington v. State*, 411 Md. 524, 552 (2009)).

*First*, in a case riddled with procedural errors, neither party saw a problem with the Bahrs’ attempt to appeal the September 21, 2018 order, but it’s not before us. The Bahrs didn’t file a notice of appeal within thirty days of the September 21, 2018 order—instead,

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<sup>4</sup> Mr. Bahr listed three Questions Presented in their brief:

A. Did the Clerk of the Circuit Court err in entering a dismissal when the action had already been stayed by prior Order of the Court?

B. Did the Clerk of the Circuit Court err in entering a dismissal when the original and proximate cause of the dismissal was the Clerk’s mistaken issuance of a notice of contemplated dismissal?

C. Did the Circuit Court err in concluding that the Bahrs failed to act with diligence?

The Hugheses, Myers, and Mr. Bane rephrased those Questions Presented as follows:

1. Did the trial court clearly abuse its discretion in refusing to strike the dismissal of Appellants’ Second Action pursuant to Maryland Rule 2-507 for lack of due diligence by Appellants?

they filed a motion for reconsideration. That was their right, but the timing of that motion determines whether their post-reconsideration notice of appeal brought the September 21 order along with it.

The Maryland Rules don't provide specifically for a motion for reconsideration, but trial courts can revise their decisions after final judgment under Maryland Rules 2-534 or 2-535. Rule 2-534 allows motions to alter or amend a judgment within ten days after entry of judgment:

In an action decided by the court, on motion of any party filed within *ten days* after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings . . . , may amend the judgment, or may enter a new judgment.

(emphasis added). And when a party files a Rule 2-534 motion within ten days of judgment, Rule 8-202(c)<sup>5</sup> “extends the time period for noting an appeal to this Court until 30 days after the motion is withdrawn or decided.” *Estate of Vess*, 234 Md. App. 173, 194 (2017) (emphasis omitted). A timely, ten-day post-judgment motion causes the judgment effectively to “lose its finality” for purposes of appeal. *Green v. Hutchinson*, 158 Md. App.

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<sup>5</sup> Rule 8-202(c) states:

In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, or 2-534, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532 or 2-534.

168, 171 (2004). In addition, courts have a general revisory power under Rule 2-535(a),<sup>6</sup> which allows motions within thirty days of judgment:

On motion of any party filed *within 30 days* after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have under Rule 2-534.

(emphasis added). Importantly, though, post-judgment motions filed after ten days of judgment do not extend the time for appealing from that judgment.

The Bahrs filed their “Motion to Reconsider” on October 5, 2018, fourteen days after the September 21, 2018 order denying their motion to strike the dismissal in the second action. The relief they sought could have been construed as falling under Rule 2-534, but because it wasn’t filed within ten days, it didn’t toll the September 21, 2018 order. This matters because the Bahrs didn’t then file a notice of appeal within thirty days of the September 21 order—they waited until after the court denied their motion for reconsideration. As a result, the notice of appeal they *did* file raises only the court’s decision to deny the Bahrs’ motion to reconsider—a decision we also review for abuse of discretion, but only with regard to whether the court abused its discretion in not reversing itself. *See RRC Northeast, LLC*, 413 Md. at 673 (“In general, the denial of a motion . . . for reconsideration is reviewed by appellate courts for abuse of discretion.”).

The distinction might not make a huge difference if we were to agree with the Bahrs

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<sup>6</sup> Although not the case here, if the Bahrs had filed a motion pursuant to Rule 2-535(a) *within ten days*, Rule 8-202(c) also extends the time period for filing an appeal to this Court. *Estate of Vess*, 234 Md. App. at 194.



that the circuit court erred as a matter of law when it issued the Notice of Contemplated Dismissal in the second case—the case, they note, had been stayed through the resolution of appellate proceedings in the first case. That’s true, and we share their confusion in that regard, and their quite reasonable question about how, or if, Rule 2-507 could operate to shorten that judicially issued stay. And the situation wasn’t helped by counsel’s mistake in responding to the Notice in the wrong case.

But the decisions that matter were made later, after the appellate proceedings in the first case had concluded, and after the stay would have expired on its own. In denying the Bahrs’ motion to reconsider, the court explained that the Bahrs knew that they had been granted a deferral (albeit under the wrong case number) that lasted only 180 days, expiring on July 8, 2017. The appellate proceedings in the first case concluded in February 2018, but the Bahrs didn’t seek to resurrect the *second* case until six months later on August 21, 2018. The court appeared to have found the Bahrs’ explanation for not reacting sooner—that they didn’t know the case was dismissed—unconvincing. We can’t say that that conclusion was unreasonable. Even if we assume that the dismissal of the second case was an error attributable solely to the court, and the Bahrs were blameless through the end of the first case’s appeals, the court was not *compelled* to undo the dismissal six months after the stay would have lifted on its own terms. Nor, on reconsideration, to revisit that conclusion.

Under the circumstances, we see no abuse of discretion in the court’s decision to deny reconsideration of the November 20, 2018 order. The mistakes were unfortunate, but

the court could reasonably have concluded from this record that the Bahrs waited too long to identify and attempt to resolve the errors, and neither the circumstances nor the Rules compelled the court to conclude otherwise.

**JUDGMENT OF THE CIRCUIT COURT  
FOR BALTIMORE COUNTY AFFIRMED.  
APPELLANTS TO PAY COSTS.**