

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0695

September Term, 2014

RAHIMAISA ABDULA

v.

MONTGOMERY COUNTY SHERIFF
DEPARTMENT ET AL.

Zarnoch,
Leahy,
Rodowsky, Lawrence, F.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 25, 2015

*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 September 12, 2013, Appellant Rahimaisa Abdula filed a *pro se* complaint against “five police officers of Montgomery County Sherriff’s Office,” employees of Washington Adventist Hospital, and employees of The World Bank in the Circuit Court for Montgomery County, alleging various civil rights violations stemming from her involuntary confinement to a health facility at Washington Adventist Hospital. Well after 120 days, the court sent Ms. Abdula a notice of contemplated dismissal for failure to serve the defendants. The case was called for a hearing on March 27, 2014 to address this and other procedural issues, but Ms. Abdula failed to appear and the court dismissed the complaint without prejudice. Ms. Abdula appeals the court’s dismissal of her complaint as well as its denial of her motion to vacate. She presented three questions for our review, which we have consolidated into two:¹

- I. Did the circuit court err in dismissing Ms. Abdula’s complaint and in denying her motion to vacate its judgment of dismissal?

¹ Ms. Abdula presented the following three questions:

- I. Was the lower court’s denial to reconsider the civil case regarding the emergency petition to the court for the involuntary confinement to behavioural health facility which involve unnecessary restraint due to report of suspected criminal offense legally correct when the civil rights code of the country in particular the 42 USC section 1981 entitles right to sue, be parties and to provide evidence and to equal privileges to the law and proceedings for the security of the person?
- II. Under the 42 USC section 1983 on the civil action for deprivation of rights, is it lawful and just for the Montgomery Sheriff Darren Popkin to oppose the motion to reconsider?
- III. Does the immunity claimed by the World Bank hold under civil rights violation? Does it require to present more serious offense to revoke the immunity?

II. Does the immunity claimed by the World Bank apply when a civil rights violation has occurred?

We conclude that the circuit court did not abuse its discretion in dismissing Ms. Abdula's complaint for lack of jurisdiction pursuant to Maryland Rule 2-507 after she failed to appear in court, nor in denying her motion to vacate that dismissal. As a result, we will not address the immunity issue, which relates to the merits and was not ruled on by the circuit court. We affirm.

BACKGROUND

On September 12, 2013, Ms. Abdula filed a *pro se* complaint against "five police officers of Montgomery County Sherriff's Office," Ms. Charita Pope, MD, Mr. Brian Higgins,² Ms. Lisa Bostwick, and Mr. Alphonus Marcelis in the Circuit Court for Montgomery County. She alleged, among other things, various civil rights violations stemming from her involuntary confinement for emergency mental health evaluation at Washington Adventist Hospital. The "five police officers of Montgomery County Sherriff's Office" were named as defendants for executing the emergency petition for her involuntary confinement granted by the circuit court on July 22, 2013.

On January 21, 2014, over 120 days after Ms. Abdula filed her complaint, the circuit court issued a "Notification to Parties of Contemplated Dismissal," stating that in 30 days the proceeding would be automatically dismissed without prejudice for lack of prosecution or jurisdiction pursuant to Maryland Rule 2-507, unless a written motion

² The complaint did not list the defendant's last name, but other pleadings reflect that the defendant's name was "Higgins."

showing good cause to defer entry of dismissal was filed. On February 6, 2014, Ms. Abdula filed a Line requesting the reissuance of summonses for all defendants, and on February 11, 2014, she filed a “Motion for Revocation of Contemplated Dismissal and To Continue,” containing approximately 13 pages of purported “exceptional circumstances that contributed to [her] failure to serve [the] defendants,” which largely related to her claims of civil rights violations.

The circuit court held a scheduled status hearing on February 20, 2014. At the hearing, the court explained to Ms. Abdula that the case was 161 days old (approximately 5 months) and that no affidavits of service had been filed to certify that she had served the complaint on all defendants. The court also identified deficiencies in how the defendants were named in the complaint, explaining that the Montgomery Police Sheriff is not an office and that she needed to serve either the sheriff or the individual deputies. After advising Ms. Abdula to speak with an attorney about these deficiencies, the circuit court reset the pretrial hearing for March 27th at 10:30 a.m., stating, “I’ll give you an opportunity to have an extra month to try to sort this out, and correct the procedural issues, but if you haven’t done that by next month, I may have to dismiss the suit, because we do have to adhere to the required procedures.”

The court, however, filed an order dated March 10, 2014 (entered March 11, 2014) granting Ms. Abdula’s motion to defer entry of an order of dismissal for a period of 60 days from the date of the order based on its finding of good cause. The order further

provided, “[i]f the Defendant(s) does not answer **or** proof of services is not filed within 60 days, the Clerk shall dismiss this action and all pending issues.”³

On March 26, 2014, Ms. Abdula filed a “Motion to Postpone Status/Pre-trial Hearing” scheduled for March 27 “to provide sufficient time for the World Bank Group to respond to request for waiver of the immunity of defendants,” and “to enable the staff members of Washington Adventist Hospital to reply to the civil case filed against them.” The record reveals that on the same day, Ms. Abdula also filed what appear to be affidavits of service by certified mail for the listed defendants.⁴

The circuit court held the scheduled hearing at 10:30 a.m. on March 27, 2014, but when the court called the case, Ms. Abdula was not present. The court stated that at the February 20th hearing, “there were some significant issues, including but not limited to service” and reiterated that “I had told her that if she didn’t have them resolved by today that I would dismiss the case.” Because Ms. Abdula failed to appear and the issues raised at the February hearing had not been meaningfully addressed, the court dismissed Ms. Abdula’s claims. When Ms. Abdula arrived to court later that day (the record does not reflect what time she did so), the court explained,

³ On March 18, 2014, defendants “five officers of Montgomery county sheriff’s office,” filed a motion to extend time for filing a response to plaintiff’s complaint.

⁴ Although Ms. Abdula’s affidavits of service regarding four named defendants and “[a] number of police officers” were filed on March 26, 2014, they do not appear on the docket until April 17, 2014. Additionally, as of April 29, 2014, the Montgomery County Sheriff’s office averred that neither the Sheriff nor any member of his office had been served. In any event, the record reveals a dispute of fact as to whether process was served and whether the affidavits of service were sufficient to have brought the defendants within the jurisdiction of the court.

We called the case, and an attorney for the other side was present, and you were not here. So, I dismissed the case, and the attorney has left already. So at this point, the case is dismissed. In order to reinstate it, you'd need to file a motion to vacate, and explain why you weren't here, and what you've done. My recollection is that there were some significant issues with service, when you were last here, and I'd said if those weren't resolved by today, that we would dismiss it.

Ms. Abdula responded that she had submitted a request to postpone the hearing the day prior as well as copies of the affidavit of service. The court explained to her that, normally, opposing counsel would have 15 days to respond to a motion to continue unless a motion to shorten time was also filed. None of that happened and the hearing was not postponed. The circuit court stated:

[I]f the case is called for pretrial, and [] the plaintiff does not appear, then we dismiss the case. And that's the court's policy, and we're not picking on you. We didn't single your case out to do that. In any case where the plaintiff does not appear, I dismiss the case, and that was true of several other cases this morning.

The court reiterated that to proceed any further Ms. Abdula would need to file a motion to vacate stating the reasons why the circuit court should reinstate the action. The circuit court filed an order on March 31, 2014 (dated March 27), dismissing Ms. Abdula's case, without prejudice.

On April 9, 2014, Ms. Abdula filed a "Motion to Vacate Judgement of Dismissal of the Case for Failure to Appear on Time and Set a New Trial," listing a variety of reasons why the motion to vacate the decision was sought, including her filing of a motion for postponement. In her motion, Ms. Abdula stated that her failure to appear at the March hearing on time was a result of "expected consideration of the motion to postpone the status/pretrial hearing submitted last March 26, 2014 to the clerk's office at

2pm as prescribed by the Maryland rules.”⁵ Most of her reasons to vacate the dismissal spoke to the merits of her underlying claim. For example, she requested the decision be vacated “to prevent deprivation of civil rights and to ensure administration of justice.” Ms. Abdula also appealed to the “moral obligation” of the court and maintained that “[t]he dismissal of the civil case due to the failure to appear on time represents acquiescence to the deprivation of civil rights.”

The Montgomery County Sherriff’s Office responded on April 29, 2014, asserting that effective service still had not been made; that Ms. Abdula’s motion to vacate was accompanied by a defective certificate of process; that her motion to vacate is “merely a reiteration of [her] request that this Court untangle her bizarre litany of international conspiracies”; and that she “failed to prosecute her case during the preceding 7-1/2 months.” The Sheriff’s Office further argued that Ms. Abdula “failed to comply with the court rules and failed to comply with Judge Debelius’ admonition to appear in court, and has offered no reason why this Court should vacate its order of 27 March 2014.”

The circuit court entered an order on May 9, 2014 (dated May 6, 2014), denying Ms. Abdula’s motion to vacate. Ms. Abdula filed a motion to reconsider on June 6, 2014, and she filed this timely appeal on June 9, 2014.

⁵ On appeal, Ms. Abdula asserts that her failure to appear on time was “due to dysmenorrhea and fatigue from responding to the claimed immunity by the World Bank group.” Further, her Reply Brief reiterates that she did not appear on time due to her “fatigue and illness acquired from days of hard work to amend the complaint to prevent obstruction of justice by the staff of the World Bank who claimed immunity to the civil case.” It does not appear that Ms. Abdula asserted this argument in the circuit court.

DISCUSSION

Although Ms. Abdula's brief focuses on the merits of the claims presented in her complaint, the sole issue before this Court, at this juncture, is whether the circuit court erred in dismissing Ms. Abdula's complaint or in denying her motion to vacate.

We must construe the Maryland Rules "to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay." Md. Rule 1-201(a). Maryland Rule 2-507 provides, in relevant part:

(b) For Lack of Jurisdiction. An action against any defendant who has not been served or over whom the court has not otherwise acquired jurisdiction is subject to dismissal as to that defendant at the expiration of 120 days from the issuance of original process directed to that defendant.

* * *

(d) Notification of Contemplated Dismissal. When an action is subject to dismissal pursuant to this Rule, the clerk, upon written request of a party or upon the clerk's own initiative, shall serve a notice on all parties pursuant to Rule 1-321 that an order of dismissal for lack of jurisdiction or prosecution will be entered after the expiration of 30 days unless a motion is filed under section (e) of this Rule.

(e) Deferral of Dismissal. On motion filed at any time before 30 days after service of the notice, the court for good cause shown may defer entry of the order of dismissal for the period and on the terms it deems proper.

(Emphasis added). Here, Ms. Abdula filed her complaint on September 12, 2013, and nothing in the record reflects that she attempted to serve the complaint on the defendants at that time. Thus, **131 days later**, the circuit court entered a written notification of contemplated dismissal on January 21, 2014, pursuant to Rule 2-507(a) and (d), and advised Ms. Abdula that the matter would be dismissed within 30 days absent a motion demonstrating good cause. Ms. Abdula filed a "Motion for Revocation of Contemplated

Dismissal and to Continue” within 30 days, alleging that exceptional circumstances contributed to her failure to serve the defendants. However, her motion cites to no exceptional circumstances related to service. Rather, the exceptional circumstances alleged relate entirely to the substance of Ms. Abdula’s litany of claims.

The circuit court has wide discretion to dismiss the action under Rule 2-507—a discretion that will “be overturned on appeal only ‘in extreme cases of clear abuse.’” *Reed v. Cagan*, 128 Md. App. 641, 646 (1999) (quoting *Stanford v. District Title Ins. Co.*, 260 Md. 550, 555 (1971)). Here, the circuit court initially exercised that discretion in Ms. Abdula’s favor, despite recognizing the numerous procedural deficiencies in her complaint, and granted her additional time to correct these errors at a hearing held on February 20, 2014. At that time, the circuit court cautioned Ms. Abdula that “if you haven’t [fixed the procedural issues] by next month, I may have to dismiss the suit, because we do have to adhere to the required procedures.” The court set the case in for a hearing on March 27 at 10:30 a.m.

On March 27, Ms. Abdula failed to appear when the case was called or notify the court of her tardiness. In her absence the court dismissed her case. We review a court’s dismissal of action for failure to appear or tardiness for abuse of discretion. *Zdravkovich v. Siegert*, 151 Md. App. 295, 305-06 (2003) (applying abuse of discretion standard to determine whether the court erred in dismissing an action due to counsel’s failure to appear at trial); *Tavakoli-Nouri v. Mitchell*, 104 Md. App. 704, 708-09 (1995) (applying abuse of discretion standard to determine whether the court erred in dismissing an action due to counsel’s failure to appear at a scheduling conference). “An abuse of discretion is

said to occur where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles.” *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 437 (2003) (citations and internal quotation marks omitted).

Under the circumstances of this case, we are unable to conclude that no reasonable person would have dismissed Ms. Abdula’s complaint at the March 27, 2014, hearing, due to her failure to appear on time and in light of the numerous procedural issues with the complaint. Nor can we say that the circuit court acted without any reference to applicable rules. Indeed, the court had already granted Ms. Abdula additional time to cure the issues with her complaint even though over 120 days had passed since the action commenced. Accordingly, it was not irrational for the circuit court to dismiss the action when Ms. Abdula, the litigant, did not appear to court to explain how she had remedied the earlier deficiencies.

Moreover, when Ms. Abdula appeared later in the day, opposing counsel was no longer present. The court explained to Ms. Abdula that she was free to file a motion to vacate the dismissal, which the court would consider in deciding whether to reinstate the case. Thus, the circuit court provided Ms. Abdula with an avenue to remedy the dismissal. Ms. Abdula took advantage of this option and filed a motion to vacate the dismissal.

We likewise review a circuit court’s denial of a post-trial motion to alter or amend judgment for an abuse of discretion. *Benson v. State*, 389 Md. 615, 653 (2005) (“The Circuit Court has broad discretion whether to grant motions to alter or amend filed within

ten days of the entry of judgment.” (citation omitted)); *Sieck v. Sieck*, 66 Md. App. 37, 44-45 (1986) (“[A] motion to revise the judgment, however labeled, filed within ten days after the entry of judgment will be treated as a Rule 2-534 motion[.]”).

As noted above, Ms. Abdula explained that she failed to appear “due to the expected consideration” of her last-minute motion to postpone. But because the court did not issue an order ruling on her motion, Ms. Abdula should have known to appear on time for her hearing the following morning, and she provided no valid reason for not doing so. She also contends that, because the circuit court had called her case late in past hearings and that she only appeared 30 minutes late to the hearing,⁶ the circuit court acted unreasonably in dismissing her claims. However, it is the court, not the litigants, who controls the docket; that the court had, at a prior hearing, called the case later in the docket does not mean that the litigants need not comply with scheduled times and dates in the future.

Significantly, in her motion to vacate, Ms. Abdula did not explain to the circuit court how she cured the numerous defects in her complaint, which was the purpose for which the March 27 hearing was scheduled and held. Instead, her 30-page motion asserted various, lengthy claims relating to the merits of her case, including that the motion should be granted “to prevent deprivation of civil rights”; to “protect the integrity of the justice system”; to permit the “court to remedy and prevent the involvement of police officers in systematic abuse to civil right to ensure public security, order and

⁶ We note, again, that the transcript of this proceeding does not reflect when the case went back on the record.

peace”; to “ensure observance by international organizations of the laws of the country”; to protect national security; and “to extend justice to heinous crimes of genocide and war crimes produced by theater warfare.”

As we acknowledged above, Ms. Abdula filed certificates of service on the day before the hearing; however, we need not opine as to whether these documents were effective. Ms. Abdula did not discuss these filings in her motion to vacate. In her Reply brief, Ms. Abdula draws attention to this fact, and argues that she also effectuated service via a process server after the March 27 hearing. On one hand, we are unclear why the circuit court did not see these filings at the time it reviewed Ms. Abdula’s motion to vacate. On the other hand, we believe the litigant must bear the onus of notifying the trial court—which handles a high volume of cases—of a filing in the record, if necessary to his or her case. Appellate rules of preservation, for example, advance fairness and promote the orderly administration of the law by “requir[ing] counsel to bring the position of their client to the attention of the lower court at the trial so that the trial court can pass upon, and possibly correct any errors in the proceedings.” *State v. Bell*, 334 Md. 178, 189 (1994) (citations omitted). The same rationale applies here—if Ms. Abdula had notified the court of her filings in her motion to vacate, then the circuit court would have had the opportunity to address those and exercise its discretion accordingly. In any event, in *Zdravkovich*—recognizing that the case did not fit squarely with Rule 2-507—we observed:

While the Maryland Rules contain no rule dealing specifically with the court's inherent power to dismiss a case *sua sponte* when the plaintiff fails to appear on the day of trial, the Court of Appeals has acknowledged that a

trial court may, without abusing its discretion, grant judgment in favor of a defendant when the plaintiff fails to appear for trial.

151 Md. App. at 306 (footnote omitted).

For those reasons, based on this record we cannot conclude that the circuit court abused its discretion by dismissing Ms. Abdula's complaint or by denying her motion to vacate that dismissal.⁷

JUDGMENTS AFFIRMED.

COSTS ASSESSED TO APPELLANT.

⁷ We also note that the court did not dismiss Ms. Abdula's complaint "with prejudice," meaning that the circuit court's ruling does not preclude Ms. Abdula from filing another complaint and serving the defendants in a timely manner.