

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0783

September Term, 2014

TOMMY ROBINSON

v.

SHARON F. WEIDENFELD, ET AL.

Leahy,
*Zarnoch,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed:

*Zarnoch, Robert A., J., participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

**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 2013, Appellant Tommy Robinson filed a complaint in the Circuit Court for Allegany County against Appellees, Private Investigator Sharon F. Weidenfeld and Investigative Enterprises, seeking damages for failure to immediately return all of Appellant's "legal papers" following the termination of investigative services. Appellant's complaint was dismissed with prejudice on May 2, 2014. Appellant attempted to amend his complaint after dismissal; however, that motion was denied by the circuit court. Appellant, *pro se*, presents the following questions:

- I. "Did the trial court overlook[] the laws of Maryland Rule 1-323 Proof of Service? 'The clerk shall not accept for filing any pleading or other paper requiring service, other than an original pleading, unless it is accompanied by an[] admission or waiver of service or a signed certificate showing the date and manner of making service.[]' (E) When Appellee sent Appell[a]nt a[n] agreement to drop the complaint without filing a Certificate of Service Appellee violated MD Rule 1-323, that was overlooked by the court."
- II. "Appellant requested (1.) The Right to Amend Complaint per MD Rule 2-341, 'Amendment of Pleadings' (a) (b) (c) (d) as justice so permits."
- III. "Appellant also requested a hearing on his Motion for Amendment of Pleadings. At a hearing, the Appellant would have had the opportunity to present additional evidence in support of his claim. By denying the Appellant's Motions without granting him a hearing, the Circuit Court denied the Appellant due process of his day in court as required by Maryland Rule 2-311(f), its decisions in denying the Appellant's Motions without a hearing, were not legally correct."

We find no error in the rulings and judgments of the circuit court and affirm.

BACKGROUND

Sometime in 2008, Appellant wrote a letter to Appellees requesting Ms. Weidenfeld's help in obtaining a security video tape of an altercation that took place in February of 1991. On May 19, 2008, Ms. Weidenfeld replied to Appellant's letter,

indicating that she would need a retainer of \$750.00 to assist Appellant. Almost 3 years later, on February 22, 2011, Appellant again wrote to Ms. Weidenfeld requesting her assistance.

The extent and nature of the communications between Appellant and Ms. Weidenfeld during early 2011 are unclear from the record. However, a letter by Appellant, dated March 10, 2011, states “I am enclosing a check for \$750.00 per the conversation that we had over the telephone last week.” Thereafter, Appellant mailed three checks to Ms. Weidenfeld from April 14 to May 5, 2011, to cover the \$750.00 retainer. Appellant also sent the discovery information from his criminal case to Ms. Weidenfeld. He maintains that, from April 2011 through December 2011, he had no contact with Ms. Weidenfeld.¹

On February 9, 2012, Appellant wrote to Ms. Weidenfeld requesting a refund of his \$750.00 retainer and the return of his “legal papers.” A few weeks later, on February 27, 2012, Ms. Weidenfeld sent Appellant a money order for a full refund in the amount of \$750.00. On March 28, Appellant wrote to Ms. Weidenfeld regarding the return of his legal papers and gave his permission to release them to a friend; however, that never took place. Several months later, in July and August of 2012, Appellant made additional requests to have his discovery materials and legal papers be returned to him. On

¹ On December 5, 2011, Appellant sent a letter to the Maryland State Police inquiring whether Ms. Weidenfeld was a licensed private investigator and stating that “[s]he never sen[t] me a receipt for the money when she received it or let me know if she received any of my legal papers.” On August 6, 2013, the License Services Section of the Maryland State Police wrote to Appellant advising him that Ms. Weidenfeld did possess a current valid license.

February 10, 2013, Appellant wrote yet another letter to Ms. Weidenfeld requesting the return of documents.

On December 11, 2013, Appellant filed a *pro se* complaint in the circuit court asserting a “Civil Action . . . for the return of all legal papers and documents” and “pursu[ant] to Maryland Rule 2-301.” Appellant’s complaint acknowledged that the \$750.00 retainer was refunded to him; however, it avers that “[a]s of this date Ms. Weidenfeld has kept all [Appellant’s] legal papers, and refuse[d] to mail them back to him or to answer and of his letters, or phone calls, so [Appellant] ha[d] no choice but to seek ‘legal action’ in this Court.” Appellant’s complaint sought the return of his legal papers and “Compensatory damages” in the amount of \$26,000.00 and punitive damages in the amount of \$70,000.00.

Ms. Weidenfeld and Investigative Enterprises received service of process on or about February 17, 2014. On February 21, 2014, Ms. Weidenfeld wrote to Appellant apologizing for any misunderstanding regarding the return of Appellant’s legal papers and enclosing the requested papers. Ms. Weidenfeld’s letter also offered to pay \$100.00 and reimburse Appellant for the \$25.00 filing fee if he would dismiss his lawsuit. Enclosed therein, Ms. Weidenfeld provided a letter for Appellant to fill out that stated “I am willing to drop my lawsuit and complaints against Sharon Weidenfeld and Investigative Enterprises in exchange for a monetary payment of \$100.00 plus \$25.00 reimbursement of my filing fees.” Appellant executed that letter on March 5, 2014. That same day, Appellant acknowledged receipt of his papers but wrote to Ms. Weidenfeld indicating that he was unsure if he received “everything that was sent” and stated “I remember sending you other

papers such as, appx. 12 pages about [a] witness, and other papers. . . . If you still have them, then please send them to me asap.”

On March 14, 2014, Ms. Weidenfeld filed a motion to dismiss arguing that Appellant’s complaint failed to state a claim for which relief could be granted, that all Appellant’s money and papers had been returned to him, and that his requests for monetary damages were unfounded. Appellant filed his opposition to the motion to dismiss on April 28, 2014, and argued that his claim did have merit—asserting bald claims of negligence, fraud, theft, and blackmail. However, Appellant’s opposition also stated:

19. On 14 April 2014, [Appellant] received a General Release and a Stipulation of Dismissal from Attorney [for Ms. Weidenfeld]. See Exhibit: F, G, & H.

20. [Appellant] must submit his own Motion to Withdraw Complaint as long as it is **Without Prejudice**. See Exhibit I, as long as it is **Without Prejudice**.

21. [Appellant’s] case has merit and should NOT be dismissed with prejudice. [Appellant] and Ms. Weidenfeld had already made a legal fair agreement to drop the lawsuit and complaints against Sharon Weidenfeld and Investigative Enterprises in exchange for a monetary payment of \$125.00. See Exhibits: D.

22. [Appellant] would agree to withdraw this case **without prejudice** because [Appellant] do[es] not want to see [Appellee] Weidenfeld sitting in court later on for the state to testify against him.

(Emphasis in original). That same day, Appellant filed a motion to withdraw his complaint, which stated:

[Appellant], Tommy Robinson, pro-se hereby request[s] leave from [the] Court to file this Motion to Withdraw the Complaint, without prejudice, against Sharon F. Weidenfeld, and Investigative Enterprises, due to an Agreement between [Appellee] Sharon F. Weidenfeld and [Appellant], Tommy Robinson to drop this Complaint in exchange for a monetary payment of \$100.00 plus \$25.00 reimbursement of filing fees.

[Appellant] will accept and sign the General Release provided by [Appellee] Sharon F. Weidenfeld and her attorney

The General Release was executed by Ms. Weidenfeld on April 9, 2014, and by Appellant on April 22, 2014. It provided that Appellant released all claims made in the case, as well as “any claims that [Appellant] has, or may have, against [Appellee], now, in the past or in the future.”

On May 2, 2014, the circuit court signed an order granting Ms. Weidenfeld’s motion to dismiss, and dismissed Appellant’s complaint with prejudice. On May 30, 2014, however, Appellant attempted to reopen the case and filed a “Motion for Amendment of Pleadings” asserting that the circuit court “was wrong to dismiss the complaint with prejudice” and that “[Appellant’s] deal with Ms. Weidenfeld was made before any attorney got involved in the case, and his deal is NOT ACCEPTED.” On June 20, 2014, the circuit court signed an order that stated:

Upon consideration of the [Appellant’s] Motion for Amendment of Pleadings, it is this 20th day of June 2014, by the Circuit Court for Alleghany County,

ORDERED, that since this case was dismissed with prejudice on May 2, 2014, and the Plaintiff is not able to amend pleadings in a dismissed case, Plaintiff’s Motion for Amendment of Pleadings is **DENIED**.

Appellant’s notice of appeal was filed on June 3, 2014.²

² The circuit court’s order, signed on May 2, 2014, granting Ms. Weidenfeld’s motion to dismiss represents the point of final judgment in this case because it (1) was unqualified, final disposition of matter in controversy; (2) adjudicated of all claims against all parties; and (3) the clerk of the court docketed the grant of the motion. *See* Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article § 12–301; Md. Rules 2-601, 2-602(b). However, the docket fails to provide whether the order dismissing
(continued...)

DISCUSSION

I.

First, Appellant maintains that the circuit court erred by allowing Ms. Weidenfeld to send Appellant an agreement to withdraw his complaint without a certificate of service.

However, Maryland Rule 1-323 provides:

The clerk shall not accept for filing any pleading or other **paper requiring service**, other than an original pleading, unless it is accompanied by an admission or waiver of service or a signed certificate showing the date and manner of making service. A certificate of service is prima facie proof of service.

(Emphasis added). Documents transmitted between the parties as part of settlement negotiations are not subject to Rule 1-323 where those documents are not being presented for filing in the court. *Cf.* Md. Rule 1-323. It appears from the record in this case that, when the Ms. Weidenfeld’s letter of February 21 and the executed General Release were filed in the circuit court, they were filed by *Appellant* as exhibits attached to his response to the motion to dismiss. Appellant’s filing was accompanied by a proper certificate of service. We discern no error here.

Appellant’s complaint with prejudice was entered on the same day it was signed. Rather, the docket entry states “[m]otion is granted and the plaintiff’s complaint is dismissed with prejudice. Copies mailed to plaintiff and to Atty Roberts on 5/7/14.” Were we to conclude that the entry of final judgment occurred on May 2, 2014, Appellant’s notice of appeal would be considered untimely, having arrived a day late. But, due to the ambiguity in the docket entries, we decline to do so.

II.

Next, Appellant argues that the circuit court erred by not allowing him to amend his complaint pursuant to Maryland Rule 2-341. However, as the circuit court succinctly stated, “this case was dismissed with prejudice on May 2, 2014, and the Plaintiff is not able to amend pleadings in a dismissed case.” Maryland 2-322(c) provides, in part:

(c) Disposition. A motion under sections (a) and (b) of this Rule shall be determined before trial, except that a court may defer the determination of the defense of failure to state a claim upon which relief can be granted until the trial. In disposing of the motion, the court may dismiss the action or grant such lesser or different relief as may be appropriate. **If the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend.** The amended complaint shall be filed within 30 days after entry of the order or within such other time as the court may fix. If leave to amend is granted and the plaintiff fails to file an amended complaint within the time prescribed, the court, on motion, may enter an order dismissing the action. . . .

(Emphasis added). In *Mohiuddin v. Doctors Billing & Management Solutions, Inc.*, this Court observed:

The other problem following the dismissal of a pleading—that of whether the pleading may be amended—is **resolved by the trial court either by adding, within the four corners of the order itself, the explicit words “with leave to amend” or by leaving the order silent in that regard. There is no “in-between.” Leave to amend is either expressly stated on the face of the order or it does not exist.** If the dismissal order expressly grants “leave to amend,” there is no final judgment and the case is not closed. At that point, the future of the case is governed by the procedural requirements imposed on the amending process by Rule 2–322. By contrast, **unless the case is being kept alive by some other means, such as other parties or other still unresolved claims, a dismissal without the magic words “with leave to amend” closes the case finally and there is, therefore, nothing to amend.** The requirement that, to keep the case alive, there must be an express and unqualified grant of leave to amend within the four corners of the dismissal order itself is ironclad.

196 Md. App. 439, 452-53 (2010) (emphasis added). There was no grant of leave to amend in the circuit court’s May 2 dismissal, and therefore, the court was correct to deny Appellant’s attempt to amend the dismissed complaint.

III.

Finally, Appellant argues that the circuit court erred by not holding a hearing on his “Motion for Amendment of Pleadings.” He maintains that the hearing would have allowed him to present additional evidence in support of his claim. Thus, Appellant argues that he has been denied “due process of his day in court as required by Maryland Rule 2-311(f).”

Maryland Rule 2-311(f) provides, in part, that “[e]xcept when a rule expressly provides for a hearing, the court shall determine in each case whether a hearing will be held, but the 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.” Importantly, Appellant’s motion to amend pleadings was not dispositive of any claim or defense. Rather, as discussed above, all claims and defenses had already been disposed of by the May 2 order. Therefore, it was left to the discretion of the circuit court whether to hold a hearing on the motion, and we cannot say that the court abused its discretion in declining to hold a hearing on a motion to amend a complaint that was already dismissed with prejudice and without leave to amend. *Mohiuddin*, 196 Md. App. at 455 (quoting *Moore v. Pomory*, 329 Md. 428, 432 (1993)) (“[A]n order dismissing or granting a motion to dismiss a plaintiff’s entire complaint, without granting leave to amend, and where there are no counter-claims, cross-claims or third-party claims, puts the plaintiff out of court and terminates the particular action in the trial court. *This is true regardless of whether the dismissal was with prejudice*

or was without prejudice.” (emphasis in *Mohiuddin*). Notably, neither Appellant nor Ms. Weidenfeld requested a hearing on the motion to dismiss.

JUDGMENTS AFFIRMED.

COSTS TO BE PAID BY APPELLANT.