

Circuit Court for Anne Arundel County  
Case No. C-02-FM-20-001270

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND\*\*

No. 0620

September Term, 2022

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KIMBERLEIGH MURRAY

v.

THOMAS J. MURRAY, et al

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Shaw,  
Tang,  
Meredith, Timothy E.  
(Senior Judge, Specially Assigned),  
JJ.

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Opinion by Shaw, J.

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Filed: February 21, 2023

\*\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

\*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.

Appellant, Kimberleigh Murray, appeals from an order of the Circuit Court for Anne Arundel County denying a motion to quash a subpoena. Appellant presents two questions for our review:

1. Whether Appellant is entitled to a hearing on Appellant’s Motion?
2. Whether Appellant has a right to protection of her financial records?

### **BACKGROUND**

Thomas Murray and Melissa Becker, Appellees, have one child, M.M., born in 2019. In May 2020, Mr. Murray filed a Complaint for Custody, Visitation, & Child Support in the Circuit Court for Anne Arundel County, Ms. Becker filed a counter-complaint, and the court scheduled a merits hearing for May 17-19, 2022. On April 13, 2022, Ms. Becker served a representative for Truist Bank with a letter, subpoena, and a certificate of compliance with the Financial Institutions Article of the Annotated Code of Maryland, requesting information from financial accounts in Mr. Murray’s name, “individually, or jointly with others.” On April 15, 2022, Appellant, Kimberleigh Murray, Mr. Murray’s mother, filed a “Motion Regarding the Subpoena,” requesting that the subpoena be stricken or quashed. Ms. Becker filed an opposition, and subsequently, the court denied Appellant’s Motion on May 4, 2022, without a hearing. On May 17, 2022, the Bank provided the documents, after being notified that the motion had been denied. Appellant timely appealed.

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## DISCUSSION

### Standard of Review

“Interpretation of a statute is a question of law, and, therefore, we review *de novo* the decision of the Circuit Court.” *Heffernan v. State*, 209 Md. App. 231, 243 (2012) (citing *Moore v. State*, 388 Md. 446, 453 (2005)). “[W]here an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court's conclusions are ‘legally correct’ under a *de novo* standard of review.” *Schisler v. State*, 394 Md. 519, 535 (2006).

“Trial judges are accorded broad discretion in deciding whether to grant or deny a motion for protective order.” *Md.-Nat’l Cap. Park and Plan. Comm’n v. Mardirossian*, 184 Md. App. 207, 217 (2009). “When such a motion is denied, we review that denial based on an abuse of discretion standard.” *Id.* (citing *Forensic Advisors, Inc. v. Matrixx Initiatives, Inc.*, 170 Md. App. 520, 530-31 (2006)). “An abuse of discretion may occur when 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, or when the ruling is clearly against the logic and effect of facts and inferences before the court.” *Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020).

#### **I. The Court did not err in failing to hold a hearing prior to ruling.**

Appellant argues the court erred in failing to hold a hearing prior to ruling on her motion. Appellant contends she requested a hearing in accordance with Rule 2-311(f), and that the motion was dispositive of her claim. She cites *Bond v. Slavin* to support

her argument. *See Bond v. Slavin*, 157 Md. App. 340 (2004). Appellee argues Appellant did not adhere to the requirements of Maryland Rule 2-311(f) and that Appellant’s Motion left the decision as to whether a hearing was needed to the court’s discretion.

Maryland Rule 2-311(f) provides:

**Hearing--Other Motions.** A party desiring a hearing on a motion, other than a motion filed pursuant to Rule 2-532, 2-533, or 2-534, shall request the hearing in the motion or response under the heading “Request for Hearing.” The title of the motion or response shall state that a hearing is requested. Except 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.

In *Bond*, the parties, Mr. Slavin and Mrs. Bond, were parents of two minor children and were involved in a custody and child support dispute. *Bond*, 157 Md. at 346. Mr. Slavin’s attorney sent a subpoena duces tecum to a bank requesting Mrs. Bond’s financial records, including a joint account with her husband, Mr. Bond. *Id.* The subpoena required a representative of the Bank to appear at a court hearing with the records. *Id.* Several days later, the attorney filed a certificate attesting that the account holder’s lawyer had been notified that the subpoena was issued. *Id.* The attorney notified the Bank that no employer would have to appear at the hearing if the records were forwarded directly to her. *Id.* Prior to receiving the Bonds’ objection, the Bank representative delivered the records to the attorney. *Id.* at 347.

Mr. Bond then filed a motion for a protective order and a restraining order in the circuit court, requesting that all original copies of the records be placed in the court’s custody and that Mr. Slavin make no use, unrelated to the litigation, of the records or information; and that the Bank cease any further production of the banking records. *Id.* at 348. The court subsequently denied Mr. Bond’s motions without a hearing. *Id.*

On appeal, this Court held that Mr. Slavin had properly requested a hearing and the court was required to hold a hearing and “provide an explanation for its ruling so that any aggrieved party will have an opportunity for meaningful appellate review.” *Id.* at 355 (citing *Adams v. Offender Aid & Restoration of Balt., Inc.*, 114 Md. App. 512, 515-16 (1997)) (“[I]f any party requests a hearing, no other request is necessary to obtain a hearing.”). Appellees argued that the motion was not dispositive of a claim or defense in the case. *Id.* We rejected that argument and held that because the ruling was dispositive of Mr. Bond’s claim, the court was obligated to hold a hearing. *Id.* at 355.

To be sure, “‘magic words’ are not essential to successful pleading in Maryland.” *Alitalia Linee Aeree Italiane v. Tornillo*, 320 Md. 192, 195 (1990). “[O]ur concern is with the nature of the *issues* legitimately raised by the pleadings, and not with the labels given to the pleadings.” *Higgins v. Barnes*, 310 Md. 532, 535 n.1 (1987) (emphasis in original). “Courts and administrative agencies are expected to look at the substance of the allegations before them, not merely at labels or conclusory averments.” *Tornillo*, 320 Md. At 195 (citing *Gluckstern v. Sutton*, 319 Md. 634, 650-51 (1990)).

In the present case, Appellant’s request did not appear under a “Request for Hearing” heading, as required, but rather was in the body of the motion and specified:

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“[i]n the event the relief requested herein cannot be granted solely on the contents of the written pleadings, that this matter be scheduled for a hearing . . . .” We note that while Appellant did not comply with the technical requirements of the Rule, she did request a hearing. Her request, however, was conditioned on the court’s analysis of what was needed to rule on the motion. The language made clear that the decision regarding whether to hold a hearing was in the judge’s discretion. In other words, if a decision could be made on the contents of the pleadings, a hearing was not required. Under these circumstances, we hold the court did not err or abuse its discretion in deciding the merits without holding a hearing.

## **II. Appellant’s financial records were not improperly disclosed**

The Maryland Financial Institutions Article provides:

### **§ 1-302. Disclosure of financial records prohibited; exceptions.**

Except as otherwise expressly provided in this subtitle, a fiduciary institution, its officers, employees, agents, and directors:

- (1) May not disclose to any person any financial record relating to a customer of the institution unless:
  - (i) The customer has authorized the disclosure to that person[.]

Md. Code Ann., Fin. Inst. § 1-302.

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### **§ 1-304. Permitted Disclosures --- Subpoena requirements**

(b) *Disclosure of production permitted.* --- A fiduciary institution may disclose or produce financial records or information derived from financial records in compliance with a subpoena served on the fiduciary institution, if:

- (1) The subpoena contains a certification that a copy of the subpoena has been served on the person whose records are sought by the party seeking the disclosure or production of the records; or

- (2) Contains a certification that service has been waived by the court for good cause.

Md. Code Ann., Fin. Inst. § 1-304 (emphasis in original).

Appellant contends the court erred in denying her motion and that her financial records were wrongfully disclosed in violation of Md. Code Ann., Fin. Inst. § 1-302 & § 1-304. Ms. Becker argues the records were not wrongfully disclosed. She contends Mr. Murray failed to divulge that he had an account with Appellant, she was unaware that Appellant was a joint owner, and thus, she could not serve notice on her. Ms. Becker argues, alternatively, that Appellant did receive notice from Mr. Murray as the subpoena was issued on April 12, 2022, and Appellant’s motion was filed on April 15, 2022.

“When served with a subpoena, so long as the bank follows correct procedure, it may disclose financial records of a customer.” *Bond*, 157 Md. App. at 357. Here, the subpoena requested Truist Bank “produce, permit inspection and copying of . . . [c]opies of statements, deposit slips & checks from 1/1/2019 to the present for accounts in the name of Thomas Murray . . . individually, or jointly with others.” The subpoena further contained a certification that it had been served on Mr. Murray, the party whose records were being sought.

In our review of the court record, we found no claim that Mr. Murray did not receive notice of the subpoena, and Mr. Murray did not file an opposition to the production of the bank records. It is uncontested that Ms. Becker did not know that Mr. Murray had

a joint account with Ms. Murray, as Mr. Murray did not reveal in answers to interrogatories posed to him that he had a joint account with his mother.

**INTERROGATORY NO. 11:** List separately each bank account, savings and loan account, or other account of money on deposit with, or placed with, any banking institution, savings and loan association, brokerage firm or other entity of any kind in which you now have (or in the past three (3) years had) any interest (including any accounts used to transact business for any proprietorship you own), either alone or together with others, or in another name, giving the type and number of the account, the name and address of the depository and the names and addresses of any other person or persons who have or had any interest in same, and the nature and extent of that interest.

ANSWER: I previously shared an account with TD Bank with the Plaintiff; however, she over drafted the account and I believe that the account is now inactive. I currently have an account with Navy Federal; however, the balance in the account is negative \$150.00. I also currently have an account with SunTrust Bank and I am uncertain as to the current balance in the account.

(emphasis in original).

Generally, the Financial Institutions Article prohibits the disclosure of a customer's records, but the statute does provide an exception. That exception allows the disclosure of records upon receipt of a subpoena and certification that the customer whose records are sought has been notified. Md. Code Ann., Fin. Inst. § 1-304. The procedure, as outlined in the statute, was adhered to in the present case and no violation occurred. Appellant is a joint owner of an account with her son and therefore, her records are part and parcel of his.

In the court below, Appellant requested that the court strike the subpoena or grant a protective order, "barring Defendant from obtaining any of Ms. Murray's financial records." Because she was a joint owner, her records of account were entwined with



her son's, and the court properly denied the motion. Appellant now argues that the court should have issued a protective order limiting disclosure, and suggests the court could have used the following language:

Plaintiff's counsel shall not disclose the contents to any other person or entity other than the agents of his client and the information contained shall be used solely for purposes of this law suit and the disclosure, if any, of the documents or any part thereof by plaintiff's counsel and his agents and employees or by the agents or employee of the plaintiff corporation for any other purpose is expressly forbidden.

As Appellant did not seek this relief in the court below, we decline to address this issue.

In sum, we hold the court did not err or abuse its discretion in denying the Motion Regarding the Subpoena.

**JUDGMENT OF THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**