

Circuit Court for Calvert County
Case No. C-04-CV-19-000337

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 766

September Term, 2020

CYNTHIA ROSEBERRY

v.

CHESAPEAKE LIGHTHOUSE HOA, INC, *et*
al.

Kehoe,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: January 28, 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.

Cynthia Roseberry, appellant, appeals from an order issued by the Circuit Court for Calvert County dismissing her complaint against Chesapeake Lighthouse HOA, Inc. (the HOA), Michael Nemchik, Mary Coelho, and Ellen Throop, appellees. Ms. Roseberry raises three issues on appeal, which reduce to two: (1) whether the court erred in not allowing her to voluntarily dismiss her complaint without prejudice, and (2) whether the court erred in granting appellees’ motion to dismiss her complaint with prejudice. Because Ms. Roseberry should have been allowed to voluntarily dismiss her complaint without prejudice, we shall reverse the judgment of the circuit court.

Ms. Roseberry owns a townhome in the Chesapeake Lighthouse community in North Beach. The HOA is the principal management entity responsible for enforcing the community’s covenants and bylaws. The remaining appellees are either employees or officers of the HOA. In 2019, Ms. Roseberry filed a complaint against appellees challenging a lien that was placed on her property after she refused to pay her homeowner’s association dues. The complaint also raised claims of breach of contract, unjust enrichment, and violations of the Maryland Consumer Protection Act, based on the HOA’s alleged refusal to build a retaining wall to prevent erosion on her property and to allow her to paint her home in a color of her choice. Appellees did not file an answer. Rather, they filed a motion to dismiss or in the alternative for summary judgment, asserting that the counts in the complaint were either time barred or failed to state a claim upon which relief could be granted.

The day before the scheduled hearing on appellees’ motion to dismiss, Ms. Roseberry filed a notice of voluntary dismissal on the grounds that “series of recent []

discoveries have surfaced that require alternative government agency actions that are beyond the scope of this Court at this time.” Based on this notice, the court entered an order dismissing the case without prejudice.

Thereafter, appellees filed a “Motion to Reconsider the Granting of Plaintiff’s Voluntary Dismissal and Motion for Attorney’s Fees” (motion for reconsideration). In that motion, appellees contended that, because they had already filed the motion to dismiss or for summary judgment, Ms. Roseberry did not have the absolute right to voluntarily dismiss her complaint without permission from the court. Appellees further claimed that the court should have denied Ms. Roseberry’s request to voluntarily dismiss her complaint without prejudice because all her claims were subject to dismissal and she was only dismissing the complaint for the purpose of avoiding “an undesirable consequence of litigation.” Following a hearing, the court granted the motion for reconsideration and vacated its order dismissing the complaint without prejudice. On August 21, 2020, the court held a hearing on appellees’ motion to dismiss. Thereafter, it entered an order dismissing appellant’s complaint with prejudice. This appeal followed.

On appeal, Ms. Roseberry contends that the court erred in granting appellees’ motion for reconsideration and in vacating its order allowing her to voluntarily dismiss her complaint without prejudice. As an initial matter, appellees claim that we cannot address this argument because this Court “ruled on this matter twice” in another appeal. We disagree. After appellees filed the motion for reconsideration, the circuit court vacated its prior order dismissing the case without prejudice and scheduled a hearing on the motion for reconsideration. Ms. Roseberry filed a notice of appeal from that order. We dismissed

that appeal as having been taken from an “impermissible interlocutory appeal from a non-final judgment” and denied Ms. Roseberry’s subsequent motion for reconsideration. However, in dismissing that appeal we did not address the merits of the court’s order vacating Ms. Roseberry’s voluntary dismissal. Moreover, that dismissal did not preclude Ms. Roseberry from filing a new appeal after a final judgment had been entered.

The circuit court entered a final judgment when it dismissed Ms. Roseberry’s claims against appellees with prejudice. And Ms. Roseberry filed a timely notice of appeal from that judgment. Therefore, we may now review in this appeal the validity of the court’s order vacating the voluntary dismissal, and all other interlocutory orders entered by the court. *See* Maryland Rule 8-131(d) (“On an appeal from a final judgment, an interlocutory order previously entered in the action is open to review by the Court unless an appeal has previously been taken from that order and decided on the merits by the Court.”).

As to the merits, we agree with Ms. Roseberry that the court erred in not allowing her to voluntarily dismiss her complaint without prejudice. Appellees assert that Ms. Roseberry could not voluntarily dismiss her complaint without leave of court because they had filed a motion to dismiss or for summary judgment prior to Ms. Roseberry filing her notice of dismissal. Rule 2-506(a), however, specifically provides that a plaintiff can dismiss his or her complaint without leave of the court “at any time before the adverse party files an answer[.]” And the motion to dismiss filed by appellees was not an answer under the Maryland Rules, as it did not contain specific admissions or denials of the

averments in Ms. Roseberry’s complaint. *See* Maryland Rule 2-323(c).¹ Because appellees had not filed an answer at the time that Ms. Roseberry filed her notice of dismissal, she was not required to obtain leave of court before dismissing her complaint. Consequently, the court erred in granting appellees’ motion for reconsideration and in vacating its prior order dismissing the case without prejudice.²

**JUDGMENT OF THE CIRCUIT COURT
FOR CALVERT COUNTY REVERSED.
CASE REMANDED TO THE TRIAL
COURT TO DISMISS APPELLANT’S
COMPLAINT AGAINST APPELLEES
WITHOUT PREJUDICE. COSTS TO BE
PAID BY APPELLEES.**

¹ In the circuit court, appellees asserted that voluntary dismissal was improper based on *Scheve v. Shudder, Inc.*, 328 Md. 363 (1992). In *Scheve*, the Court of Appeals held that the plaintiff had lost the right to voluntarily dismiss his complaint because the adverse party had filed a motion for summary judgment. However, *Scheve* relied on a prior version of Rule 2-506(a) which provided that a plaintiff could only dismiss their case without leave by “filing a notice of dismissal at any time before the adverse party files an answer or motion for summary judgment.” However, in 2005, the Court of Appeals amended Rule 2-506(a) and deleted the language “or motion for summary judgment.” Therefore, *Scheve* is not dispositive of appellant’s claim.

² Because appellant should have been allowed to voluntarily dismiss her complaint without prejudice the court also erred in granting appellees’ motion to dismiss the case with prejudice. However, in so holding we express no opinion on the merits of the issues raised in appellees’ motion to dismiss. And this opinion is without prejudice to appellees filing a new motion to dismiss raising the same defenses if Ms. Roseberry elects to refile her complaint.