

Circuit Court for Prince George's County
Case No. CAL13-03446

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1280

September Term, 2021

JOEL FALIK, M.D., ET AL.

v.

CAROLYN GIBAU, ET AL.

Kehoe,
Berger,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 26, 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.

This case is before us on appeal from an order of the Circuit Court for Prince George’s County denying a Motion for Reconsideration filed by Joel Falik, M.D., and Falik & Karim, LLC (collectively, “Falik”), appellants, in a medical malpractice case with a long and tortured history. This is the fourth time this case has come before this Court in one manner or another since it originated almost ten years ago.¹

This case presents the narrow issue of whether the circuit court erred in denying Falik’s Motion for Reconsideration of the circuit court’s prior denial of Falik’s Motion for Protective Order. The Motion for Protective Order had been filed in response to an order of the circuit court granting a Request for Examination in Aid of Enforcement of a Judgment filed by the Gibaus, appellees. Falik contends that there is no valid and enforceable judgment against him, and, accordingly, the circuit court erred by denying his Motion for Reconsideration.² As we shall explain herein, we agree with Falik. Accordingly, we will reverse.

¹ The prior appeals resulted in one reversal and two dismissed appeals.

² Falik presents three questions for consideration on appeal, all of which are premised upon the same allegation that there is no valid and enforceable judgment against him. The questions, as presented by Falik, are:

1. Did Judge John P. Davey err in denying Appellants’ Motion for Reconsideration, when the relief requested was mandated by Maryland law and the procedural posture and docketed history of the case?
2. Did Judge John P. Davey err by entering and thereafter upholding his underlying January 8, 2021 order for oral examination in aid of enforcement of judgment, when

FACTS AND PROCEEDINGS

The complaint that ultimately gave rise to this appeal was filed on March 26, 2013, by decedent Christopher Moody’s mother, Carolyn Gibau, and grandfather, Henry Gibau, both individually and as personal representatives of Moody’s estate. Moody died on June 28, 2010 while hospitalized at Prince George’s General Hospital following an assault. The Gibaus alleged that Falik, a neurosurgeon, breached the standard of care when treating Moody by failing to transfer him to the intensive care unit on the morning of June 28, 2010 and by not prophylactically administering anticonvulsant medication to Moody. The Gibaus asserted that these alleged breaches of the standard of care caused Moody’s death. The Gibaus subsequently brought this medical malpractice action against Falik as well as Dimensions Health Corporation (“Dimensions”), the parent entity of Prince George’s General Hospital. The Gibaus dismissed Dimensions from the case prior to trial.

During the discovery phase, the Gibaus identified one expert witness who would opine on the standard of care, Dr. Stephen Bloomfield. During trial, Dr. Bloomfield failed to comply with a trial subpoena and court order requiring him to produce certain documents

the judgment to be enforced pursuant to that Order had, as a matter of law, been rendered moot and vacated in its entirety by a lawful and appropriate intervening ruling of the presiding trial judge in this case?

3. Did John P. Davey, in ruling in affirmation and enforcement of an already-vacated and voided judgment, commit further reversible error of law and violate applicable constitutional principles by upending and disregarding the sound, pre-existing ruling of the presiding trial judge in this case?

regarding his income from serving as a witness in medical malpractice cases. The circuit court held Dr. Bloomfield in contempt and reserved imposing a sanction. The jury returned a verdict in favor of the Gibaus and awarded \$450,000.00 in damages to Moody's estate for pain and suffering, \$463,320.23 to Moody's mother for pain and suffering, and \$13,320.23 for medical and funeral expenses.

Following the jury's verdict, Falik moved for a mistrial due to Dr. Bloomfield's failure to comply with the order requiring him to produce tax documents, which Falik asserted rendered it impossible to appropriately cross-examine Dr. Bloomfield. Falik also moved for judgment notwithstanding the verdict (JNOV), arguing that the evidence did not support the jury's finding that Moody experienced conscious pain and suffering. The circuit court granted the JNOV motion and set aside the jury's verdict. The Gibaus appealed to this Court, and we reversed, holding that the circuit court's JNOV ruling was granted on a basis that was not raised in the motion for JNOV. We further held that the circuit court erred in its substantive determination that no reasonable jury could find that the Gibaus had proved malpractice. We remanded the case to the circuit court for consideration of (1) the merits of Falik's JNOV motion on the grounds that the evidence failed to support the jury's verdict and award for the Gibaus' claim of conscious pain and suffering; and (2) the merits of Falik's motion for mistrial.

On remand, the circuit court held two hearings on the remaining issues. On April 15, 2016, the circuit court addressed Falik's JNOV motion, determining that there was not sufficient evidence to support the verdict and award of damages for Moody's pain

and suffering. The circuit court reduced the award to \$13,320.23, an amount representing “the fair and reasonable medical expenses and funeral expenses.” When the \$13,320.23 judgment was recorded on the docket on April 27, 2016, a clerical error resulted in the judgment being noted in the docket as applying against Falik as well as against Dimensions, a party that had been dismissed pre-trial. On June 7, 2016, Dimensions filed a Motion to Vacate Judgment Due to Clerical Error. The circuit court never ruled upon this motion.³

At another hearing on June 10, 2016, the circuit court addressed Falik’s mistrial motion. At the hearing, counsel for Falik asserted that Dr. Bloomfield’s testimony should be stricken, arguing as follows: “Your Honor, what I would propose in the motion for mistrial is to strike the testimony of Dr. Bloomfield and we won’t need a new trial.” The circuit court granted the request and struck the testimony of Dr. Bloomfield. Specifically, the court explained: “I’m striking Dr. Bloomfield’s testimony. Therefore, [Falik’s] motion for a new trial is withdrawn. The matter is moot. Case is closed.” By striking the testimony of the Gibaus’ only expert witness on standard of care and causation, the circuit court vacated the entire judgment in this case as a matter of law. On June 17, 2017, the oral ruling of the circuit court from July 10, 2016 was reduced to writing in the clerk’s “civil daily sheet” and subsequently filed. The Gibaus filed a Request for Written Order, asking that the circuit court issue a written order “reflecting the [c]ourt’s finding at the hearing of

³ The circuit court’s subsequent action on June 10, 2016 served to render Dimensions’ June 7, 2010 motion moot.

June 10, 2016.” On August 29, 2016, the circuit court denied the Gibaus’ request for a written order.

The Gibaus noted an appeal to this Court on September 6, 2016. Falik moved to dismiss the appeal on the grounds that it was not timely filed.⁴ We granted Falik’s motion and dismissed the appeal pursuant to Md. Rule 8-602(a)(1) on December 21, 2016. *See Gibau v. Falik*, Case No. 1453, Sept. Term 2016. The Gibaus filed a subsequent Motion for Reconsideration, which was denied on February 9, 2017. The Gibaus also filed multiple motions in the circuit court in which they alleged that the April 15, 2016 and June 10, 2016 rulings were improper, including a motion to disqualify the trial judge. All of the motions were denied. On July 11, 2017, the circuit court issued an order providing that “[a]fter a review of the file there are no unresolved issues to decide. Accordingly, it is this 11th day of July, 2017, by the Circuit Court for Prince George’s County Maryland ORDERED that this case is closed for statistical purposes.”

On March 4, 2019, nearly three years after the circuit court issued its order striking Dr. Bloomfield’s testimony, thereby vacating the judgment against Falik, the Gibaus filed a Motion to Reinstate and Expedite Judgment and Order Clerical Correction. On December 26, 2019, the circuit court granted the Gibaus’ motion, ordering that “judgment entered on April 27, 2016 shall be corrected to read in favor of the Plaintiff, Carolyn Gibau and against Defendant, Dr. Joel L. Falik, M.D. . . . *nunc pro tunc* to the date of the original

⁴ Falik asserted that the time to file an appeal began to run on June 17, 2016 and expired on July 17, 2016.

judgment.” The Gibaus noted an appeal to this Court. *Gibau v. Falik*, Case No. 2515, Sept. Term 2019. Falik moved to dismiss the appeal on the grounds that the December 26, 2019 order was a clerical matter that was not appealable. On March 25, 2020, we granted Falik’s motion and dismissed the appeal “pursuant to Maryland Rule 8-602(b)(1) as not allowed by law.”

Nearly eight months later, on November 17, 2020, the Gibaus filed a Request for Order Directing Judgment Debtor to Appear for Examination in Aid of Enforcement of Judgment, seeking enforcement of the \$13,320.23 award for medical and funeral expenses that the Gibaus asserted was still a valid judgment.⁵ In response, Falik filed a Motion to Strike the Request for Order Directing Judgment Debtor to Appear. Falik contends that on January 4, 2021, the motion to strike was sent electronically to the Gibaus’ attorney and mailed to the trial court. The docket reflects that the motion to strike was not docketed until over two weeks later on January 20, 2021.

On January 8, 2021, after Falik’s motion to strike was mailed but before it was ultimately docketed by the circuit court, the circuit court issued an order requiring that Falik “appear virtually via Zoom, on Wednesday the 24th day of February, 2021, at 11:00 am for oral examination under oath before” an examiner. On February 23, 2021, the circuit court denied Falik’s motion to strike. The examination took place on February 24, 2021. On March 3, 2021, Falik filed a Motion for Protective Order in response to what

⁵ Falik asserts that he was not properly served with this motion and that he did not obtain a copy of the pleading until December 31, 2020.

Falik alleged was an improper examination and attempted enforcement of a non-enforceable judgment. On March 19, 2021, the circuit court issued an order denying Falik’s Motion for Protective Order. The order was docketed on March 22, 2021. Falik asserts that the circuit court’s ruling was never properly issued to or served upon him or his counsel. Falik contends that he only belatedly became aware of the ruling after Falik’s counsel inquired with the trial court about the status of the motion. The court responded to Falik’s counsel’s inquiry on July 19, 2021 via email and included a copy of the order denying the Motion for Protective Order. A docket entry reflecting the order addressing the motion appears in the printout of the electronic case docket included in the record extract.

On July 27, 2021, Falik filed a motion for reconsideration. The circuit court denied the motion for reconsideration in an order dated September 21, 2021 and docketed September 23, 2021. Falik noted an appeal on October 21, 2021.⁶

STANDARD OF REVIEW

As a preliminary matter, we observe that the scope of our review is limited by the timing of the appeal. Pursuant to Maryland Rule 8-202, would-be appellants are generally required to file a notice of appeal “within 30 days after entry of the judgment or order from which the appeal is taken.” The deadline may be extended by the filing of certain

⁶ On September 23, 2021, the circuit court issued a show cause order, requiring that Falik appear for an in-person hearing on November 18, 2021 and show cause as to why the relief requested by the Gibaus should not be granted. The show cause hearing was canceled in light of the pending appeal.

post-judgment motions. Md. Rule 8-202. A motion to revise a judgment under Maryland Rule 2-535 must be filed within ten days of judgment in order to stay the time for appeal. *Sieck v. Sieck*, 66 Md. App. 37, 43-44 (1986) (citing *Unnamed Att’y v. Att’y Grievance Comm’n*, 303 Md. 473, 484-86 (1985)). “When a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion.” *Furda v. State*, 193 Md. App. 371, 377 n.1 (2010); *see also Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 723 (2002) (declining to review the underlying judgment where the motion for reconsideration was filed more than ten days after entry of judgment).

Here, the circuit court denied Falik’s Motion for Protective Order on March 22, 2021. Although Falik contends that this order was never served upon him or his counsel and that he was not made aware of the ruling until after counsel inquired about the status of the motion on July 14, 2021, the motion was denied in an order dated March 19, 2021 and docketed on March 22, 2021. Falik’s Motion for Reconsideration was filed on July 27, 2021. Because the Motion for Reconsideration was filed more than ten days after the denial of the Motion for Protective Order, the time for an appeal was not stayed.

On appeal from the denial of a motion for reconsideration pursuant to Maryland Rule 2–535, “the applicable standard is whether the court abused its discretion.” *Wormwood*, *supra*, 124 Md. App. at 700. Under this standard, “[w]e will not reverse the judgment of the hearing judge unless there is grave reason for doing so.” *Hossainkhail*, *supra*, 143 Md. App. at 724 (citing *Northwestern Nat’l Ins. Co. v. Samuel R. Rosoff, Ltd.*,

195 Md. 421, 434 (1950)). “The real question is whether justice has not been done, and our review of the exercise of a court’s discretion will be guided by that concept.” *Wormwood*, *supra*, 124 Md. App. at 700–01 (citations omitted). “[T]rial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature.” *Wilson-X v. Dep’t of Hum. Res.*, 403 Md. 667, 675 (2008); *see also Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 433 (2007) (“[W]here the record so reveals, a failure to consider the proper legal standard in reaching a decision constitutes an abuse of discretion.”).

DISCUSSION

The narrow issue before us in this appeal is whether the circuit court committed reversible error when it denied Falik’s Motion for Reconsideration and affirmed its prior ruling denying Falik’s Motion for Protective Order, which had been filed in response to the circuit court’s Order for Oral Examination Under Oath in Aid of Enforcement of a Judgment.⁷ Falik asserts that there is no valid and enforceable judgment against him, and, therefore, the circuit court erred by denying his Motion for Reconsideration. We agree.

⁷ Although discovery orders including rulings on motions for protective orders are not usually immediately appealable, “[i]n situations where the aggrieved appellant, challenging a trial court discovery or similar order, is not a party to the underlying litigation in the trial court, or where there is no underlying action in the trial court but may be an underlying administrative or investigatory proceeding, Maryland law permits the aggrieved appellant to appeal the order because, analytically, it is a final judgment with respect to that appellant.” *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Associates, P.A.*, 392 Md. 75, 90-91 (2006); *see also Unnamed Att’y v. Att’y Grievance Comm’n*, 303 Md. 473, 480 (1985) (“We have rejected the argument that, in this situation, one must be adjudged in contempt of the court order in order to obtain appellate review.”). In this case, as we shall

In the order denying Falik’s motion for reconsideration, the circuit court commented that “[t]he core of [Falik’s] argument is based on the mistaken premise that there is no judgment against them.” The circuit court further observed that “[Falik] contend[s] that [the trial judge’s] Order from June 10, 2016 granting Defendants’ Motion for Mistrial means there is currently no active enforceable judgment” and referred to the court’s prior December 26, 2019 order in which the trial court “stated that there was ‘no indication that the award for reasonable funeral and medical expenses was vacated when the court vacated the judgment for pain and suffering.’”

Critically, however, the circuit court failed to consider the effect of the June 10, 2016 order of the circuit court striking the testimony of the Gibaus’ one and only medical expert witness. Absent Dr. Bloomfield’s testimony, the Gibaus were unable to present a *prima facie* case of medical malpractice. *See, e.g., Rodriguez v. Clarke*, 400 Md. 39, 71 (2007) (“Because the gravamen of a medical malpractice action is the defendant’s use of suitable professional skill, which is generally a topic calling for expert testimony, this Court has repeatedly recognized that expert testimony is required to establish negligence and causation.”) (internal citations and quotations omitted). By striking Dr. Bloomfield’s testimony, the circuit court, as a matter of law, vacated the prior monetary judgments entered against Falik in favor of the Gibaus.

explain, there was no longer any pending action after the circuit court struck the testimony of Dr. Bloomfield and, as a matter of law, vacated the prior monetary judgments entered against Falik in favor of the Gibaus.

It is of no consequence that the circuit court had previously reduced the judgment “to \$13,320, the fair and reasonable medical expenses and funeral expenses” on April 15, 2016. On June 10, 2016, the circuit court’s order striking Dr. Bloomfield’s testimony had the necessary effect of vacating the entire judgment. Accordingly, we hold that the circuit court erred in denying Falik’s Motion for Reconsideration because it incorrectly relied upon the inaccurate premise that “[t]he judgment for \$13,320.23 with interests and costs remain.”

In their appellate brief filed before this Court, the Gibaus do not respond to any of the issues presented by Falik regarding the necessary effect of the circuit court’s June 2016 order striking the testimony of their only expert witness. Instead, the Gibaus seek to revisit the propriety of the circuit court’s 2016 orders striking the jury award for pain and suffering and striking the testimony of Dr. Bloomfield.⁸ The Gibaus assert that the circuit court’s order striking Dr. Bloomfield was unlawful and inappropriately ambiguous. The Gibaus further contend that the circuit court’s 2016 order striking the award for pain and suffering was beyond the scope of the remand and not properly before the circuit court.

We shall not address the propriety of the circuit court’s 2016 rulings striking Dr. Bloomfield’s testimony and striking the jury award for pain and suffering because they are not properly before us in this appeal. If the Gibaus wished to challenge the substance of

⁸ Falik moved to strike the Gibaus’ brief on the grounds that the brief failed to address any of the issues raised in Falik’s brief and instead raised separate issues challenging actions of the trial court in 2016. We denied the motion to strike with leave to argue matters relating to the proper scope of this appeal at oral argument.

the circuit court’s rulings regarding the pain and suffering award and the striking of Dr. Bloomfield’s testimony, they could have done so at the appropriate time. The time to raise such challenges has long since expired. Indeed, the Gibaus noted an appeal of the trial court’s June 2016 order on September 6, 2016, but the appeal was subsequently dismissed by this Court pursuant to Md. Rule 8-602(a)(1). *See Gibau v. Falik*, Case No. 1453, Sept. Term 2016 (December 21, 2016). Thereafter, the Gibaus filed a Motion for Reconsideration, which this Court denied on February 9, 2017. Matters regarding the propriety of the circuit court’s 2016 rulings vacating the jury award for pain and suffering and subsequently striking the testimony of Dr. Bloomfield are not properly before us in this appeal six years later. These rulings are implicated only because this Court is tasked with determining the necessary effect of the circuit court’s 2016 rulings. As we have explained, the necessary effect of the circuit court’s order striking Dr. Bloomfield’s testimony was to vacate the entire judgment against Falik in favor of the Gibaus as a matter of law.

We, therefore, hold that the circuit court’s order denying Falik’s motion for reconsideration relied upon the inaccurate premise that “[t]he judgment for \$13,320.23 with interests and costs remains.” Indeed, in actuality, the entire judgment against Falik was vacated as a matter of law after the testimony of the plaintiff’s only expert witness was stricken by the trial court. Accordingly, the circuit court’s denial of Falik’s motion for reconsideration constituted an abuse of discretion. As a result, we remand this case to the

circuit court with direction to issue an order clarifying that no judgments remain in effect against Falik and thereby concluding this case.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. CASE REMANDED TO THE CIRCUIT COURT FOR ISSUANCE OF AN ORDER ENTERING JUDGMENT IN FAVOR OF FALIK CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEES.