

Circuit Court for Anne Arundel County
Case No.: C-02-CV-23-000547

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1688

September Term, 2024

LARRY M. DERR, JR.

v.

JONATHAN N. PORTNER, *et al.*

Leahy,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 7, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

In March 2023, Larry M. Derr, Jr. sued Jonathan Portner, Simran Rahi, Richard Shure, and Portner and Shure, P.A. (collectively “the Appellees”), in the Circuit Court for Anne Arundel County, alleging professional malpractice and vicarious liability stemming from the Appellees’ representation of him in a personal-injury case. In the court’s scheduling order, it set the deadline to disclose expert witnesses for July 2, 2024. On the deadline, Derr moved to extend the time for filing an expert disclosure. The court granted him until July 31.

Five days before the new deadline, Derr filed a Motion for Appointment, asking the court to appoint an expert witness on his behalf and grant an extension of time for it to do so. The Appellees opposed Derr’s motion and, a few days later, moved for summary judgment, which Derr, in turn, opposed. On September 23, the circuit court awarded summary judgment to the Appellees. A week later, Derr moved for reconsideration and designated an expert witness. The court denied his motion, and this appeal followed.

Derr first argues the circuit court erred because the judge assigned initially to the case entered an order after recusing herself. Even if this were erroneous, Derr ignores the fact that the post-recusal order granted a motion he filed. A party is generally not prejudiced when a court grants them the relief they requested. *See Flores v. Bell*, 398 Md. 27, 33 (2007) (To prevail in a civil appeal, “[t]he burden is on the complaining party to show prejudice as well as error.”). Accordingly, we decline to address this argument.

Derr next argues that the court abused its discretion in denying his motion to strike the Appellees’ Answer to his Fourth Amended Complaint. He suggests their Answer was untimely. It was not so. The Appellees filed their Answer just two days after Derr filed the

redlined copy of his Fourth Amended Complaint. The court thus did not abuse its discretion in refusing to strike it.

Derr’s remaining arguments are intertwined. He contends the court erred in declining to appoint an expert witness for him, in awarding summary judgment to the Appellees, and in denying his motion for reconsideration. We disagree.

We review the grant of summary judgment *de novo*. *Heneberry v. Pharoan*, 232 Md. App. 468, 479 (2017). In doing so, we “review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts against the moving party.” *Id.* (cleaned up). On the other hand, we review decisions declining to modify a scheduling order and decisions declining to reconsider the judgment for an abuse of discretion. *Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 551 (2020) (scheduling order); *Estate of Vess*, 234 Md. App. 173, 205 (2017) (reconsideration). This occurs when “no reasonable person would take the view adopted by” the circuit court or when it acts “without reference to any guiding rules or principles.” *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru Inc.*, 195 Md. App. 583, 597 (2010) (cleaned up).

With narrow exceptions, not here relevant, “[e]xpert testimony as to the relevant standard of care is necessary in an attorney malpractice case[.]” *Franch v. Ankney*, 341 Md. 350, 357 n.4 (1996). Indeed, we have made clear that “allegations of professional malpractice require expert testimony, because the intricacies of professional disciplines generally are beyond the ken of the average layman.” *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 720 (2013) (cleaned up).

Here, Derr failed to timely designate an expert witness in support of his legal malpractice claim. He cites to no case—and we are aware of none—that required the circuit court to appoint an expert witness for him. The court had previously granted Derr an extension of time to designate an expert witness. In his “Motion for Appointment,” Derr signaled that although he had sought out experts, they had all refused to accept the assignment unless Derr was represented by counsel and every attorney Derr consulted refused to take his case. There was no suggestion that additional time would yield a different result. Under these circumstances, we cannot say the court abused its discretion in denying Derr additional time to designate an expert witness.

Without an expert witness, Derr could not prevail on his claim as a matter of law. To prevail on his claim, Derr was required to prove that but for the Appellees’ actions, he would have obtained a more favorable judgment in his personal-injury case. *See Suder v. Whiteford, Taylor & Preston, LLP*, 413 Md. 230, 241 (2010). At a minimum, doing so successfully would involve expert testimony regarding the standard of care. Thus, because Derr failed to designate an expert witness, the court did not err in awarding summary judgment to the Appellees.

Finally, although Derr attempted to designate an expert witness within ten days after the court granted summary judgment, the court did not abuse its discretion in refusing to reconsider the judgment. Courts generally exercise their revisory control and power over a judgment only “to ensure that no meritorious defenses or other equitable circumstances justify reversal, not to extend the period of discovery.” *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716, 728 (2002). Derr’s failure to timely designate an expert witness “without

good cause was sufficient to support the court’s denial of the motion for reconsideration.”

Id.

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