Circuit Court for Baltimore City
Case No. 24-C-22-004937

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1867

September Term, 2023

WELSCH INSURANCE GROUP, LLC,
ET AL.

v.

ERIE INSURANCE EXCHANGE, ET AL.

Graeff,
Tang,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: December 18, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This appeal arises from a complaint filed by appellants, Welsch Insurance Group, LLC, and Thomas A. Welsch (collectively "Welsch"), in the Circuit Court for Baltimore City, against appellees, Erie Insurance Company and related entities (collectively "Erie"). The complaint alleged breach of contract, civil conspiracy, unfair business practices, and discrimination. Erie filed a Motion to Dismiss, which the circuit court granted. Welsch then filed an amended complaint. The circuit court subsequently granted Erie's Motion to Strike the amended complaint.

On appeal, Welsch presents the following questions for this Court's review, [1] which we have consolidated and rephrased, as follows:

1. Did the circuit court abuse its discretion in striking Welsch's amended complaint?

2. Did the circuit court abuse its discretion in failing to *sua sponte* exercise its power under Maryland Rule 2-535?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

[1] Welsch presents the following questions in its brief:

1. Whether or Not the Trial Court Clearly Erred and/or Abused its Discretion by Striking [Welsch's] Amended Complaint, which was Specifically Authorized On the Record by Judge Schreiber?

2. Whether or Not the Trial Court Clearly Erred and/or Abused its Discretion by Misapplying *Mohiuddin v. Doctors Billing & Mgmt., Sols., Inc., 196 Md. App. 439 (2010)*, to the Facts of [Welsch's] Case; as the Two Cases are Diametrically Opposite?

3. Whether or Not the Trial Court was Clearly Erroneous and/ or Abused its Discretion by Not Exerting it's Power *Sua Sponte* under MD Rule 2-535?

FACTUAL AND PROCEDURAL BACKGROUND

Welsch alleged in its complaint that, in December 2007, it entered into a contract with Erie to sell insurance in Baltimore City, Maryland. In 2017, Erie instructed Welsch to increase profitability by refraining from writing insurance policies with "city-sounding names." Welsch refused, asserting that it would not discriminate against individuals based on race. On November 25, 2019, Erie terminated its contract with Welsch. Welsch alleged that the termination was retaliatory, occurring because Welsch refused to discriminate against people of color.

On November 21, 2022, Welsch filed its complaint against Erie, alleging breach of contract and civil conspiracy. The complaint was based on conduct that Welsch was challenging in an ongoing administrative complaint with the Maryland Insurance Administration ("MIA"), which was still pending when the lawsuit was filed.

On March 10, 2023, Erie filed a Motion to Dismiss. It raised the following grounds for dismissal: (1) Erie's MIA complaint was still ongoing, and the lawsuit could not proceed until the MIA made a final determination; (2) Welsch lacked standing to pursue the lawsuit because it was seeking damages on behalf of non-party individuals; and (3) Welsch had failed to state a claim upon which relief could be granted.

On April 21, 2023, the circuit court held a hearing on Erie's Motion to Dismiss. The court granted the motion on the ground that Welsch had failed to exhaust administrative remedies. The motions judge indicated that the motion was being dismissed "without

prejudice to refile an amended complaint." The same day, the court issued an order dismissing the complaint without prejudice and instructing the Clerk to close the case.

On May 22, 2023, within thirty days after the circuit court's order of dismissal, Welsch filed an amended complaint, alleging negligence, negligent misrepresentation, fraud, and civil conspiracy. Erie filed a motion for leave to file a motion to strike the amended complaint, asserting that the April 21, 2023 order of dismissal did not grant Welsch leave to amend the original complaint, and therefore, the amended complaint should be stricken in its entirety.

On September 20, 2023, the circuit court held a hearing on Erie's motion. Erie argued that Welsch could not file an amended complaint because leave to amend was not provided within the "four corners" of the order of dismissal. It noted that, although the court dismissed the complaint without prejudice, that permitted Welsch to file a new lawsuit, but it could not amend the original complaint.

Welsch disagreed, arguing that the court had "specifically, and directly, and unequivocally" granted it leave to file an amended complaint during the dismissal hearing. It also argued that the amended complaint included a claim of negligence, which did not implicate any provision of the MIA, and therefore, it was proper.

On October 11, 2023, the circuit court issued a Memorandum Opinion and Order, granting Erie's Motion to Strike. The court noted that there is a "clear mandate" in Maryland based on the language in Rule 2-322(c) and *Mohiuddin v. Drs. Billing & Mgmt. Sols., Inc.*, 196 Md. App. 439, 452-55 (2010), that there is no right to file an amended

complaint in the absence of a "grant of leave to amend in the four corners of the dismissal order." Because the "express language containing the magic words" were not in the dismissal order, the court granted the motion to strike.

This appeal followed.

DISCUSSION

Before addressing Welsch's arguments, we must first determine whether this appeal is properly before us. Erie argued in its brief that the appeal should be dismissed because the dismissal order issued on April 21, 2023, was a final judgment that terminated Welsch's lawsuit, and the court's subsequent action of striking the amended complaint was not a final appealable decision.

Welsch did not file a reply brief responding to the motion to dismiss. Nor did he address it at oral argument.

"[U]nless constitutionally authorized, appellate jurisdiction 'is determined entirely by statute,'" and thus, a right of appeal exists only when it has been "'legislatively granted.'" *Mayor & City Council of Balt. v. ProVen Mgmt., Inc.*, 472 Md. 642, 665 (2021) (quoting *Gisriel v. Ocean City Bd. of Supervisors of Elections*, 345 Md. 477, 485 (1997)). Parties have a right of appeal to this Court "from a final judgment entered by a [circuit] court." Md. Code Ann., Cts. & Jud. Proc. ("CJ") § 12-301 (2020 Repl. Vol.).

Here, we agree with Erie that the initial order of dismissal, which did not grant leave to file an amended complaint, was a final, appealable judgment. *See Walser v. Resthaven Mem'l Gardens, Inc.*, 98 Md. App. 371, 380 (1993) (order dismissing complaint without

granting leave to file an amended complaint "was final and appealable"). That, however, is not dispositive of the issue whether the order striking Welsch's amended complaint is also a final judgment.

For a court's order to be considered a final judgment, it must satisfy three conditions: (1) the court must intend it "'as an unqualified, final disposition of the matter in controversy;' (2) 'it must adjudicate or complete the adjudication of all claims against all parties;' and (3) 'the clerk must make a proper record of it'" in accordance with the rules. *Waterkeeper All., Inc. v. Md. Dep't of Agric.*, 439 Md. 262, 278 (2014) (quoting *Rohrbeck v. Rohrbeck*, 318 Md. 28, 41 (1989)). The essential question is whether the ruling effectively "put[s] the parties out of court and den[ies] them the means of further prosecuting the case or the defense." Judge Kevin F. Arthur, *Finality of Judgments and Other Appellate Trigger Issues* 5 (3d ed. 2018).

The circuit court's order striking Welsch's amended complaint satisfied these conditions. The order was a final disposition of the amended complaint and it effectively put Welsch out of court and denied it further means to prosecute its claims. Thus, striking the amended complaint is a final and appealable judgment. Accordingly, we address the merits of the appeal.

I.

Authorization to File Amended Complaint

Welsch contends that the circuit court erred in granting Erie's Motion to Strike the amended complaint because the judge who dismissed the case stated on the record that the

dismissal was "without prejudice to refile an amended complaint." It asserts that the subsequent ruling that it was not entitled to file an amended complaint was clearly erroneous and nonsensical.

Erie contends that the court did not abuse its discretion in striking Welsch's amended complaint. It asserts that the initial order dismissing Welsch's complaint without granting leave to amend terminated "[t]he [l]awsuit [i]n [i]ts [e]ntirety," and therefore, there was nothing to amend.

This Court reviews a circuit court's granting of a motion to strike an amended complaint for an abuse of discretion. *Bacon v. Arey*, 203 Md. App. 606, 667 (2012). *Accord Matter of Jacobson*, 256 Md. App. 369, 411 (2022) ("We review the circuit court's grant of a motion to strike for abuse of discretion."). An abuse of discretion occurs "where no reasonable person would take the view adopted by the [trial] court[ ] . . . or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court [ ] . . . or when the ruling is violative of fact and logic." *Bacon*, 203 Md. App. at 667 (alterations in original) (quoting *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 28 (2005)). As explained below, the circuit court did not abuse its discretion by striking Welsch's amended complaint.

Maryland Rule 2-322(c) provides, in part, that, if the court orders dismissal of a complaint, "an amended complaint may be filed *only if the court expressly grants leave to amend*." (Emphasis added). In *Mohiuddin*, 196 Md. App. at 453, this Court explained that

an amended complaint can be filed only if the dismissal order contains "the explicit words 'with leave to amend.'" If the dismissal order lacks the specific language "with leave to amend," the case is considered closed, there is nothing left to amend, and the filing of an amended complaint is "a nullity." *Walser*, 98 Md. App. at 380. Because the order dismissing the complaint did not grant Welsch leave to amend, the court did not abuse its discretion in granting Erie's motion to strike the amended complaint.

Welsch contends, however, that the circuit court clearly erred by applying *Mohiuddin* because its facts are "[d]iametrically [o]pposite" from this case. It notes that, in *Mohiuddin*, the court never said that an amended complaint could be filed, but here, the court expressly stated on the record that appellants could file an amended complaint.

This argument is foreclosed by *Mohiuddin*, where this Court stated:

> 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. . . . By contrast, . . . 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. at 453.[2] The circuit court here did not abuse its discretion in granting the motion to strike Welsch's amended complaint.

[2] In *Moore v. Pomory*, 329 Md. 428, 432 (1993), the Supreme Court of Maryland discussed the effect of the phrase "without prejudice":

> a dismissal of the plaintiff's entire complaint "without prejudice" does not mean that the case is still pending in the trial court and that the plaintiff may amend his complaint or file an amended complaint in the same action.

II.

Modification of Order

Despite the lack of language in the order authorizing leave to file an amended complaint, Welsch contends that the record is clear that the judge granting the motion to dismiss "wanted and authorized [it] to file an [a]mended [c]omplaint," and Welsch did so "with the express leave of the [c]ourt." It asserts that the judge addressing the motion to strike the amended complaint was aware of this, and it should have *sua sponte* revised the dismissal order under Rule 2-535.

Erie contends that this issue was not preserved for appeal because it was not raised in the circuit court. It asserts that the requirement to revise a judgment under Rule 2-535 has not been satisfied here because Welsch did not file a motion for the court to exercise its revisory power. Additionally, it argues that the court did not abuse its discretion by not *sua sponte* revising the order because Rule 2-535 was not applicable.

Rule 2-535 states:

> (a) **Generally. —** *On motion of any party* filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a

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> Rather, the case is fully terminated in the trial court. *Williams v. Snyder, Adm'r,* 221 Md. 262, 266-67, 155 A.2d 904, 906-07 (1959). The effect of the designation "without prejudice" is simply that there is no adjudication on the merits and that, therefore, a new suit on the same cause of action is not barred by principles of res judicata.

> verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.
>
> (b) **Fraud, Mistake, Irregularity. —** *On motion of any party* filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

(Emphasis added).

As indicated, the language in Rule 2-535 permits the court to exercise its revisory power "[o]n motion of any party." Nevertheless, the Supreme Court of Maryland has held that a court may "act *sua sponte* to revise a judgment under Rule 2-535." *Md. Bd. of Nursing v. Nechay*, 347 Md. 396, 409 (1997).

In reviewing an issue on appeal, however, this Court generally will not consider an issue that was not raised in the circuit court. *See* Maryland Rule 8-131(a) (appellate courts generally will not consider an issue not raised in or decided by the circuit court). *Accord Harris v. State*, 251 Md. App. 612, 636 (2021) (an appellate court will not address an issue not raised in or decided by the circuit court unless an exception applies); *Livesay v. Balt. Cnty.*, 384 Md. 1, 18 (2004) ("Because these issues were not raised below, we shall not consider them."). Here, Welsch never made a motion under Rule 2-535 to revise the limited order dismissing the complaint. Welsch did make a brief reference to the rule during oral argument, reiterating the argument he made at the motions hearing that, if the amended complaint was not permitted because it was not authorized by order,

> it's essentially a clerical error. Which it can be tidied up by under Maryland Rule 2-534 or 2-535, I forget which one it is, where all that needs to happen is the -- or go back to the Judge and he slips in the language that apparently he didn't put in the order which is causing them all of this consternation and legal gymnastics. That's the simplest thing. But to say that the Court did not

> say "magic words" to give me the right to file an amended complaint, that's just a base falsehood and they know it.

This was not sufficient to put the circuit court on notice that Welsch was asking the court to revise the earlier judgment and the court did not do so. The issue is not preserved for this Court's review, and we will not address it.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.