Circuit Court for Harford County
Case No. 12-C-11-002948

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1988

September Term, 2022

MICHAEL C. WORSHAM

v.

RICHARD M. PARROTTE

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

JJ.

Opinion by Shaw, J.

Filed: August 12, 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 its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This is an appeal from the entry of a judgment and the denial of a motion to alter or amend the judgment by the Circuit Court for Harford County. On September 7, 2011, Appellant, Michael Worsham, filed a Complaint in the District Court for Harford County, alleging breach of contract by Appellee, Richard Parrotte, and a failure to pay for legal services rendered from 2009 to February 2010 in the amount of $5,000. Parotte filed a counterclaim and a jury trial demand, and the case was transferred to the Circuit Court for Harford County.

On March 21, 2016, Worsham filed an amended complaint in the circuit court, increasing his demand from $5,000 to $63,000 for additional breaches of contract. The circuit court later dismissed Parrotte's countercomplaint with prejudice. A bench trial was held on November 9, 2022, and on November 14, the court entered an Order of Judgment in Parrotte's favor. Worsham filed a Motion to Alter or Amend the Judgment and on December 14, 2022, his motion was denied. Worsham noted this appeal on January 13, 2023, and he presents the following questions which we have reordered.

QUESTIONS PRESENTED

1. Whether the Circuit Court abused its discretion in not sanctioning Parrotte for both failing to appear for the scheduling conference and failing to bring the documents he was subpoenaed and specifically ordered to bring.

2. Whether the Circuit Court erred in not admitting Exhibit 5 into evidence.

3. Whether the Circuit Court erred by recognizing Parrotte's claim to have a separate oral contract with Worsham for hourly defense work solely from the proceeds from separate contingent litigation, because even if such a separate contract existed, it would be a contingent fee agreement, and illegal and unenforceable because it was not in writing as required by ethics rules.

4. Whether the Circuit Court erred by recognizing Parrotte's claim to have a separate oral contract with Worsham, to pay Worsham for hourly defense work solely from the proceeds from separate contingent litigation, because even if such an agreement existed, it would be performed over a one[-]year period, but was not written as required by the statute of frauds, and unenforceable.

BACKGROUND

In 2009, Appellant, Michael Worsham, agreed to help Appellee, Richard Parrotte, in a debt collection matter (the "*Ruble* case"). Part of his assistance involved him observing two depositions, and "review[ing] documents and exchang[ing] email[sic] with [Parrotte] and [] some phone calls." The two agreed that Worsham would not formally represent Parrotte as his attorney because "Mr. Parrotte did not want [Worsham] to get too involved in the case. . . ."

The parties had previously entered into a written agreement regarding Worsham's formal representation of Parrotte. The agreement stated, in pertinent part:

> THIS IS a contract between Richard Michael Parrotte (Client), and Michael C. Esq., ("Attorney"), for your hiring Attorney to handle the following matter: debt collection defense and related consumer and common law violations. Attorney is not responsible for handling any other case or matter unless the terms and conditions are separately agreed upon in writing.

On September 7, 2011, Worsham filed a civil action in the District Court for Harford County against Parrotte, seeking attorney's fees, for "legal services" he provided in the *Ruble* case. Worsham stated that he worked "[forty-two] hours at $200/hour, creating a legal fee of $8,400." Of that debt, Worsham claimed that Parrotte paid $1,750, resulting in a balance of $6,650 that, as of September 7, 2011, was still owed.

Parrotte filed a counterclaim and a jury demand. In the counterclaim, he argued that Worsham represented him as an attorney in numerous cases under the Telephone Consumer Protection Act (TCPA). According to his counterclaim:

> ***The hourly fees claimed by Worsham in his Complaint herein, arise from a separate matter*** in which Parrotte, who was pro se defendant in civil case, informed Worsham that Parrotte intended to take depositions of the Plaintiff's witnesses in that case. Parrotte asked Worsham if Worsham could attend and observe the depositions which Parrotte was intending to take. Parrotte also informed Worsham that Parrotte could not afford to pay Worsham for this task out of Parrotte's pocket and ***requested, as specific condition precedent to Worsham undertaking this task, that Worsham look only to the net client proceeds of the TCPA suits*** Worsham was then bringing and would bring in the future on behalf of Parrotte, as Worsham's only source of payment for Worsham's services attending and observing the said depositions. ***Worsham agreed to these conditions*** (emphasis added).

Parrotte's counterclaim and jury demand were later dismissed by the court and the case proceeded on Worsham's complaint.

Pretrial conferences were scheduled by the court for May 31, 2022, and June 27, 2022. Parrotte was subpoenaed to provide "original or copies of all payments to Michael Worsham made by [Parrotte] through any account over which [Parrotte] exercise[d] control, including any business accounts regardless of the format including but, not limited to, checks, check stubs, check registers and check ledgers." He did not appear for either conference nor did he provide the requested documents.

Trial took place in the circuit court on November 9, 2022. Preliminarily, Worsham requested that the court impose sanctions against Parrotte because of his failure to appear at the conferences and his failure to present the requested documents. During an inquiry by the court, Parrotte testified that the documents "don't exist," and that "years ago [he]

turned over documents like this to the Attorney Grievance Commission . . . ," but that, after ten years, he was not in possession of the requested documents. The court then ordered that Parrotte would not be able to introduce any documents related to payment.

During Worsham's case, he acknowledged that he did not formally represent Parrotte as an attorney in the *Ruble* case. He testified that he "sent [Parrotte] a statement, a list of the ongoing time that [he] was spending on the case and [he] would update it as time went by." Without objection, Worsham admitted a billing statement for the *Ruble* case into evidence. The statement detailed the tasks completed, the amount of time spent on each task, and the date of the task from "pre-Dec[ember] 8, 2009" to February 2010. A final entry was made on June 24, 2010, stating that a $500 payment was made by Parrotte. According to Worsham, the "Agreement covered the hourly defense work, and that Parrotte made several payments via checks for the hourly work" in the amounts of $500 and $750 evidencing his knowledge of the written agreement and his consent to its terms.

On cross-examination, Parrotte challenged the validity of the agreement, billing statement, and the origin of the payments.

> [PARROTTE]: Mr. Worsham, this statement that you gave me that is dated April 9th, 2010, you indicate that there are two payments here; one is for $750.00, and one is for $500.00 later in the year. Do you have copies of the checks or how those payments were made?
>
> [WORSHAM]: No. I deposited the checks and that was ten years ago.
>
> [PARROTTE]: Do these two payments represent checks that you received from me, paper checks or were they electronic payments?
>
> [WORSHAM]: I'm pretty certain they were paper checks.

> [PARROTTE]: Is it possible these checks were the proceeds from TCPA awards?
>
> [WORSHAM]: I don't know. As I recall they were personal checks of yours as opposed to your company. If there was something written on the memo line, I wouldn't remember now ten years later.

Ultimately, no records were provided to the court concerning payments to Worsham.

Parrotte questioned Worsham about the written agreement and whether it was meant to cover Worsham's work in the *Ruble* matter or whether the two had established an oral agreement where Worsham would be paid through earnings from separate contingent TCPA cases he was already hired as an attorney to represent Parrotte in.

> [PARROTTE]: Do you recall the payment terms that we had arranged for your presence to sit in on the depositions for Matt Ruble and Lee Morris?
>
> [WORSHAM]: Yeah. They were this agreement that is Exhibit 1.
>
> [PARROTTE]: You do not recall any agreement that these payments would be made from TCPA [Telephone Consumer Protection Action] winnings?
>
> [. . .]
>
> [COURT]: Mr. Worsham has answered as I understand it that in this particular proceeding his answer is no.

At the conclusion of the trial, the court entered judgment in favor of Parrotte. The court stated:

> [COURT]: [M]y mind is in a state of absolute equal balance. I cannot believe one party more than the other. In our system when there is a tie, so to speak, that goes to the Defendant. So, the judgment is entered in favor of the Defendant.

On November 23, 2022, Worsham filed a motion to alter or amend the judgment, which was denied by the court on December 14, 2022. This appeal was noted on January 13, 2023.

STANDARD OF REVIEW

We review the circuit court's factual findings under a clearly erroneous standard and its legal conclusions *de novo*.

> If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous. When reviewing mixed questions of law and fact, we will affirm the trial court's judgment when we cannot say that its evidentiary findings were clearly erroneous, and we find no error in that court's application of the law. On the other hand, regarding pure questions of law, the trial court enjoys no deferential appellate review, and the appellate court must apply the law as it discerns it to be.

Shih Ping Li v. Tzu Lee, 210 Md. App 73, 96 (2013) (quoting *Fischbach v. Fischbach,* 187 Md. App. 61, 88–89 (2009)) (internal citations and quotation marks omitted).

A trial court's decision to deny a motion to alter or amend its judgment is reviewed pursuant to Maryland Rule 2-534 for an abuse of discretion. *See Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015). The circuit court "has broad discretion whether to grant motions to alter or amend filed within ten days of the entry of judgment. . . ." *Id.* (quoting *Benson v. State*, 389 Md. 615, 653 (2005)). Thus, our examination is "typically limited in scope." *Schlotzhauer*, 224 Md. App. at 84 (citing *Cent. Truck Ctr., Inc. v. Cent. GMC, Inc.*, 194 Md. App. 375, 397 (2010)). A court abuses its discretion when "'no reasonable person would take the view adopted by the [] court' or when the court acts 'without

reference to any guiding rules or principles.'" *Johnson v. Francis*, 239 Md. App. 530, 542 (2018) (quoting *Powell v. Breslin*, 430 Md. 52, 62 (2013)).

Reversal of the lower court's decision is warranted in cases where there is "both an error and a compelling reason to reconsider the underlying ruling." *Schlotzhauer*, 224 Md. App. at 85. *E.g. Williams v. Hous. Auth. Of Baltimore City*, 361 Md. 143, 153 (2000) (holding that it is [an] abuse of discretion not to strike judgment and allow further proceedings where judgment was "based on a clear mistake" later brought to the court's attention).

I. The court did not err in denying Appellant's motion for sanctions.

Worsham argues that the court erred in denying his motion to impose sanctions. He asserts that Parrotte failed to produce requested documents and the court failed to recognize that Parrotte's testimony could have been contradicted by the documents that he failed to produce. Worsham also contends that sanctions should have been imposed because Parrotte failed to appear for the scheduling conferences. Parrotte argues that, despite his failure to present documents that he did not have in his possession, the court "sanctioned [him] by not allowing [him] to present any documents during the trial."

"Maryland Rule 2-433 provides 'two separate mechanisms by which a court may levy sanctions against a recalcitrant party.'" *A.A. v. Ab.D*, 246 Md. App. 418, 422-444 (2020) (quoting *Warehime v. Dell*, 124 Md. App. 31, 54 (1998)). First, a court may, on motion by a discovering party, impose immediate sanctions against the failing party if the court "finds a failure of discovery." Md. Rule 2-433(a). The court "may enter such orders

in regard to the failure as are just," including: (1) an order designating facts as established for the purpose of the action; (2) "[a]n order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence"; or (3) "[a]n order striking out pleadings or parts thereof, or staying further proceeding until the discovery is provided, or dismissing the action or any part thereof[.]" Md. Rule 2-433(a).

Second, pursuant to Rule 2-433I, the court may impose sanctions for a failure "to obey an order compelling discovery." *Warehime*, 124 Md. App. at 54 (discussing the former version of Md. Rule 2-433(c)). When a party or witness responds to a discovery request, but the discovering party deems that response inadequate, Rule 2-432(b) permits the discovering party to move for an order to compel discovery. Md. Rule 2-432(b). If a person violates an order compelling discovery, the discovering party may pursue sanctions under Rule 2-433(c).

In addition to its authority under the Maryland Rules to impose sanctions, a trial court also has the power to impose sanctions as part of the court's inherent power to control and supervise discovery. *Gallagher Evelius & Jones, LLP v. Joppa Drive-Thru, Inc.*, 195 Md. App. 583, 596 (2010). "Even if . . . the precise action taken by the circuit court is not specifically prescribed by a rule or statute, the court has the ability, in general, to definitively and effectively administer and control discovery, as the Maryland Rules contemplate." *Id.*

Here, during the motions hearing on sanctions, the court asked:

[COURT]: Now, these particular documents that the subpoena directed, do you have those documents with you today?

[PARROTTE]: They don't exist.

[COURT]: They don't exist? There is no such documentation?

[PARROTTE]: No.

[COURT]: And you would n– --

[PARROTTE]: Not in my possession. I mean, years ago I turned over documents like this to the Attorney Grievance Commission and to some of my attorneys, but I don't personally.

[COURT]: You didn't keep a copy for yourself?

[PARROTTE]: Well, I normally keep documents for --

THE COURT: Did you keep a copy for yourself?

[PARROTTE]: Years ago.

[COURT]: Do you have a copy now in existence?

[PARROTTE]: No, I don't.

[COURT]: So, you have no such document that you could introduce into evidence. Is that correct?

[PARROTTE]: No, I don't. That's correct.

[COURT]: Mr. Worsham, do you have any response? He says that he doesn't have any such documents and doesn't intend to introduce them at the trial today.

[WORSHAM]: Yes, Your Honor. This essentially is a simple contract collection case for attorney's fees. The purpose of the subpoena was to see if he had any record of payments I made. He says he doesn't have any documents now.

> [COURT]: It seems to me that resolves the issue. He is not going to be able to introduce any documents. So, they won't be considered by the Court.
>
> [. . .]
> [WORSHAM]: I would ask that the Court limit his ability to defend this contract collection suit on the basis that I made a payment since he is saying I didn't keep records of any such payments.
>
> [COURT]: I'm going to deny that. In the course of evaluating the credibility of the witness, the Court can take that fact into account. Are you ready to proceed with the trial, Mr. Worsham?

As noted, pursuant to Md. Rule 2-433(a)(2), a court has broad discretion to impose the type of sanction it believes is appropriate for an infraction. Such sanctions can include "[a]n order refusing to allow the failing party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence[.]" Md. Rule 2-433(a)(2).

Here, the court did sanction Parrotte, contrary to the arguments raised by Worsham, in that the court ruled that Parrotte was precluded from introducing documents of payment. Based on the record before us, we hold that the court did not abuse its discretion. It resolved the discovery issue and its sanction was not a decision that "'no reasonable person would have taken… or where the court acts 'without reference to any guiding rules or principles.'" *Johnson*, 239 Md. App. at 542.

II. The court did not err in failing to admit Exhibit 5.

Worsham contends that the court erred in not admitting "Exhibit 5," which consisted of a number of pages Parrotte testified that he did not recognize. Worsham contends that because Parrotte recognized the cover page of the documents, and a name of an attorney

who previously worked on Parrotte's behalf within the documents, the court should have admitted the documents. He argues that he testified that "[t]here is no way I would have received them [the documents marked as Exhibits] other than from Mr. Parrotte handling that matter."

> [WORSHAM]: Do you recognize the contents of the other pages in Exhibit 5?
>
> [PARROTTE]: I see there it refers to – --
>
> [COURT]: Do you recognize them?
>
> [PARROTTE]: I don't recognize them.
>
> [COURT]: He doesn't recognize them.
>
> [. . .]
>
> [WORSHAM]: Now that you have seen the document, do you remember that you sent pages 2, 3 and 4 of Exhibit 5 accompanied by page 1 of Exhibit 5 as a cover sheet?
>
> [COURT]: I'm going to rephrase the question. Viewing the other pages of the document, does it refresh your recollection?
>
> [PARROTTE]: No.
>
> [COURT]: It does not refresh his recollection.
>
> [. . .]
>
> [WORSHAM]: Mr. Parrotte, can you explain how I would have possession of the document that we have marked as Exhibit 5?
>
> [PARROTTE]: Which one was that?
>
> [WORSHAM]: This last one.

> [PARROTTE]: This one? Can I explain how you have this document? I would assume because you received it by fax.
>
> [. . .]
>
> [WORSHAM]: I would like to move Exhibit 5 into evidence.
>
> [COURT]: I'm not going to admit it because the witness does not recognize it. Now, it is possible it may be admitted at some point in the future in the trial, but as for now I deny its admissibility.
>
> [WORSHAM] Your Honor, I have another exhibit that I would like to have marked as Exhibit Number 6.
>
> [COURT]: You may certainly.

Assuming the issue is properly preserved, we hold that under Md. Rule 5-901(a), the document could not have been admitted as it was not properly identified. The requirement of authentication or identification is a condition precedent to admissibility and is only satisfied by "evidence sufficient to support a finding that the item is what the proponent claims it is." Md. Rule 5-901(a). The court did not err in refusing to admit the exhibit at that point in the trial, and it was not subsequently offered again.

III. The circuit court did not err in entering judgment in favor of Parrotte.

The testimony at trial presented the court with two conflicting versions as to the parties' agreement, written or oral, its terms, and the nature of payment for work performed. While the parties did agree that, for the *Ruble* case, Parrotte did not hire Worsham to formally represent him as his lawyer, it was clear that Worsham provided

some legal advice and did attend two depositions. It is also clear that Worsham did provide Parrotte formal legal representation in other matters.

Worsham argues that, although he did not contract to formally represent Parrotte, he had a written agreement to provide legal services for the "*Ruble* case." He claims that any oral agreement would violate Maryland Rule 19-301.5(c) and the Statute of Frauds. According to him, such an agreement would need to be in writing in order to be valid.

Conversely, Parrotte contends that the written agreement presented to the court did not cover Worsham's services in the *Ruble* case. Instead, he claims, the two had an oral agreement where Worsham was to be paid from the earnings gained through other contingency based TCPA cases he was contracted to formally represent him in.

At the conclusion of the trial, the court did not find that Worsham had sustained his burden of proof. The court stated:

> In this case I found the testimony of Mr. Worsham to be very credible, but I also found the testimony of Mr. Parrotte to be very credible. We're dealing with something that took place more than ten years ago. It is not surprising that either party doesn't have an absolute crystal clear recollection of these events.
>
> The testimony is in complete dispute as to whether or not there was an agreement between the parties that Mr. Worsham would receive payment for attending these depositions in a matter involving Mr. Parrotte.
>
> Mr. Parrotte's testimony is there would be payment out of the TCPA cases if Mr. Worsham was there to collect and then get the credit. Mr. Worsham contends it was independent, he was to be paid for the services separately without any consideration of the TCPA legal representation. There are no documents of any check or any other records to know the source or manner of the two payments that are listed in the exhibit.

> Therefore, my mind is in a state of absolute equal balance. I cannot believe one party more than the other. In our system when there is a tie, so to speak, that goes to the Defendant. So, judgment is therefore entered in favor of the Defendant.

Based on this record, we hold the court did not err. We note "that, if the trier of fact's state of mind on an issue is in equipoise, then the judgment or verdict must be against the party that had the burden of persuasion on that issue." *Collins/Snoops Associates, Inc. v. CJF, LLC*, 190 Md. App. 146, 162 (2020). *See also Eidelman v. Walker & Dunlop*, 265 Md. 538, 545 (1972). We defer to the trial court's judgment, recognizing that "it is in the best position to assess the import of the particular facts of the case and to observe the demeanor and credibility of witnesses." *Evans v. Wilson*, 382 Md. 614, 623 (2004) (citations omitted). It is, further, not within our preview to disturb such findings unless they are clearly erroneous. *See Shih Ping Li,* 210 Md. App at 96. Here, there was competent evidence presented on both sides and as a result, we cannot find that the court's determination that the evidence was equally compelling was error.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.