

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2616

September Term, 2014

SHERRI PFISTERER

V.

MARYLAND GENERAL HOSPITAL INC. ET AL.

Meredith,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: January 22, 2016

*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.

On or about December 5, 2013, Sherri A. Pfisterer, appellant, filed a complaint in the Circuit Court for Baltimore City against Maryland General Hospital (MGH) and Robert Welton, appellees. In October 2014, appellees filed a motion to dismiss based on discovery violations. By order dated December 15, 2014, the court granted the motion and dismissed the complaint with prejudice. Appellant filed a motion to vacate, alter, or amend the December 15 order. The court denied the motion, and appellant noted this appeal. We shall affirm.

Background

Because of the nature of the issue before us, the record contains very few facts relevant to the causes of action, other than those alleged in the complaint. Appellant alleged the following. Appellant had been employed by MGH as a nurse educator. In 2010-2012, while so employed, she took time off from work under the “Family Medical Leave Act.”¹ When she returned to work, she learned that Mr. Welton had communicated confidential information about her leave to other employees. After she complained about the breach of privacy, Mr. Welton treated her differently. On April 23, 2012, because of intolerable working conditions, she was forced to resign. Based on the alleged conduct of Mr. Welton, appellant asserted claims of wrongful discharge, “false light,” tortious interference with economic advantage, defamation, and intentional infliction of emotional distress. Appellees filed a motion to dismiss. On April 18, 2014, the court dismissed the

¹ Appellant’s counsel did not provide a citation.

counts alleging tortious interference with economic advantage, defamation, and intentional infliction of emotional distress.

On May 2, 2014, the court entered a scheduling order. It set August 30, 2014 as the discovery cutoff date. On May 6, 2014, MGH filed interrogatories and a request for documents directed to appellant. Appellant requested an extension of time to respond, and MGH granted an extension to June 16, 2014. On June 23, 2014, after sending a letter to appellant’s counsel and receiving no response, MGH filed a motion to compel. By order dated September 11, 2014, the court granted the motion and ordered executed discovery responses to be provided no later than five days from the docketing of the order. Appellant did not do so. On September 30, 2014, appellant served unexecuted answers to interrogatories, but did not respond to the request for documents. On October 2, 2014, MGH’s counsel sent a letter to appellant’s counsel pointing out deficiencies in discovery and offering to meet to discuss the situation. Appellant’s counsel did not respond.

In the interim, in July 2014, appellees’ counsel, by letter, requested dates to take appellant’s deposition. Appellant’s counsel did not respond. On August 4, 2014, MGH filed a second motion to compel. Having received no response to the request to take the deposition, appellees’ counsel noticed it for August 28, 2014. Neither appellant nor appellant’s counsel appeared for the deposition. By order dated September 10, 2014, the court granted MGH’s August 4 motion to compel, extended the discovery deadline to October 10, 2014, and ordered appellant to appear for deposition on or before that date. After again sending a letter to appellant’s counsel with no response, appellees’ counsel noticed appellant’s deposition for October 10, 2014. On that date, appellant’s counsel

appeared and explained that appellant was not feeling well and the deposition would have to be postponed. Appellees' counsel took the position that they could not agree to postpone it but would wait two hours for the appellant to arrive. In refusing to postpone the deposition, appellees' counsel explained that the discovery cutoff date in the scheduling order had been extended only until October 10. Despite a representation by appellant's counsel to appellees' counsel that appellant was on her way to the deposition, appellant did not appear.

On July 3, 2014, MGH served a request for admissions on appellant's counsel. In November 2014, after appellant's counsel had filed the motion described in the next paragraph, appellant's counsel stated that a response to the requests would be filed as soon as possible. No response was filed.

On October 21, 2014, appellees filed, *inter alia*, a motion to dismiss as a discovery sanction. On November 7, 2014, appellant filed a response and attached documents and executed answers to interrogatories. The response did not address other asserted deficiencies in discovery, detailed in the October 2 letter.

Also in the response, appellant asserted that her medical problems had prevented her from responding to discovery requests in a timely manner, explaining that during the "past year," she had received treatment for back, neck, hand, foot, and ankle injuries. There was no showing of why the medical problems had prevented appropriate communications over a multi-month period.

Appellees' motion was scheduled for hearing on December 15, 2014. Neither appellant nor her counsel appeared at the hearing. By order dated the same date, the court granted appellees' motion.

On December 22, 2014, appellant's counsel filed a motion to vacate, alter, or amend the December 15 order. Appellant's counsel explained that he had failed to attend the hearing because a former employee in his office had failed to deliver the notice to him. By order dated January 12, 2015, the court denied the motion.

Questions Presented

As condensed and rephrased by us, appellant asks whether the circuit court abused its discretion when it dismissed appellant's complaint with prejudice.²

Discussion

Sanctions are available for a violation of a scheduling order and for noncompliance with discovery orders. A sanction may include dismissal of a complaint. *Butler v. S&S*

² In the words of appellant, the questions are:

- I. Whether the Trial Judge abused his discretion by granting Appellee's Motion to Dismiss for Discovery Sanction well after the deadline for filing dispositive motions (had passed) pursuant to The Trial Court's Scheduling Order?
- II. Whether The Trial Judge erred as a matter of law by finding that Appellant's Discovery Responses submitted 28-days late caused actual prejudice to Appellees warranting dismissal?
- III. Whether The Trial Court erred as a matter of law by failing to consider Appellant's well-documented medical history as a mitigating factor that precluded timely submission of Discovery Responses?

Partnership, 435 Md. 635, 649, 653 (2013); *Rodriquez v. Clarke*, 400 Md. 39, 57, 65 (2007).

Appellant’s arguments may be summarized as follows: The court abused its discretion in that it did not adequately consider the mitigating circumstances of appellant’s health; appellees’ counsel did not engage in good faith efforts to resolve the discovery issues; and appellees suffered no actual prejudice.

Appellant’s arguments are without merit. As the circuit court noted, appellant failed to (1) serve responses to written discovery within the time set by the September 11, 2014 order, and when they were served, putting aside the question of adequacy of response, it was not until after the discovery deadline; and (2) appear for deposition in violation of the court’s September 10, 2014 order. The court clearly considered the mitigating circumstances offered by appellant. With respect to any obligation to confer in good faith, it was satisfied. There not only was complete failure of discovery, but a violation of three court orders: the scheduling order, the September 10 order, and the September 11 order.

In *Hossainkhail v. Gebrehiwot*, 143 Md. App. 716 (2002), the plaintiff failed to respond to written discovery requests despite repeated requests to do so. The defendants filed a motion to compel discovery. The court granted it and ordered the plaintiff to provide discovery by a certain date. The plaintiff did not do so. The defendants filed a motion to dismiss, and the court granted it. *Id.* at 722-723. On appeal, the plaintiff argued that his conduct was not willful or contumacious; he had a valid excuse; and the defendants were not prejudiced. *Id.* at 725.

This Court stated that (1) the failure to comply with the court's order was a substantial violation of the plaintiff's disclosure obligation; (2) asserting "personal problems" without a showing of why the plaintiff could not be responsive was insufficient; and (3) the failure of discovery could have impinged on the outcome of the trial, despite the fact that the defendants had obtained some information from other sources. *Id.* at 725-727. We held that the circuit court did not abuse its discretion. *Id.* at 729.

In the current matter, the failure to respond was far more egregious than in *Hossainkhail*. We have little difficulty in concluding that the court did not abuse its discretion.

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