Circuit Court for Howard County
Case No. 13C15103528

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 484

September Term, 2016

KATHRYN A. MACDONALD

v.

ERIE INSURANCE GROUP, ET AL.

Woodward, C.J.,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 13, 2017

*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 May 14, 2015, Kathryn MacDonald, appellant, filed a complaint for breach of contract against Erie Insurance Group, et al. ("Erie" or appellee) in the Circuit Court for Howard County.[1] She alleged that Erie, with whom she had a homeowners' insurance policy, failed to pay damages for a loss she sustained in May 2012. When MacDonald, however, failed to respond to Erie's discovery inquiries, Erie filed a motion to compel discovery, which was granted. After MacDonald failed to comply with the court's order, Erie filed a motion for sanctions. The circuit court granted that motion and dismissed MacDonald's complaint with prejudice. She noted this timely appeal, seeking our review of the granting of the motion for sanctions.[2] Finding no abuse of discretion in the circuit court's ruling, we affirm.

BACKGROUND

In May 2012, MacDonald alleged that because of the faulty workmanship of contractors, she sustained extensive water damage to her home. Erie advised her that the

[1] MacDonald also sued Joseph McMartin Insurance ("McMartin"), the agent who had sold her the Erie insurance policy. On December 7, 2015, the court granted McMartin's motion to dismiss.

[2] MacDonald lists four questions in her brief, but three of them concern issues that are not properly before us.

We note, too, that several times in her brief, MacDonald states that she is unrepresented and that this Court should not "penalize" her for her unfamiliarity with the rules of procedure. Although we may sympathize with her, we cannot permit her to abide by a different standard than a represented party: "No different standards apply when parties appear *pro se*." *Tretick v. Layman*, 95 Md. App. 62, 86 (1993). Indeed, "'[t]he principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident.'" *Dep't of Labor, Licensing & Regulation v. Woodie*, 128 Md. App. 398, 411 (1999) (quoting *Tretick*, 95 Md. App. at 68).

loss was not covered by her homeowners' insurance policy. On May 14, 2015, MacDonald filed a complaint for breach of contract, arguing that Erie should pay for her damages because the water damage was a covered loss.

On August 25, 2015, Erie filed an answer and propounded discovery to MacDonald. The deadline for discovery was January 10, 2016. For the next several months, Erie and MacDonald communicated frequently about her discovery responses, which were not forthcoming, despite her assurances that she was working on them. On January 7, 2016, following a hearing, the court denied Erie's motion for summary judgment. On January 12th, Erie filed a motion to compel discovery, to which MacDonald responded by asking that the motion be denied. The circuit court granted Erie's motion on February 11th and ordered MacDonald to provide discovery responses by February 27, 2016. Following a settlement conference on February 24th, the court reminded MacDonald of the order, and the parties scheduled another settlement conference in July. On the 25th, MacDonald filed a motion to extend the deadline for her discovery responses and a motion to shorten time for the court's decision on her extension.[3]

On March 2, 2016, having not received MacDonald's discovery responses, Erie filed a motion for sanctions, requesting that the court dismiss MacDonald's complaint.

[3] MacDonald asserted that because of an error with the mail, she did not receive the court's February 11th order compelling her to provide discovery until a few days prior to the responses being due. It has long been the case, however, that parties are "charged with notice of what actually is recorded in the court records as to the case, without regard to [] actual knowledge, so that the docket entries are constructive notice to the parties and their counsel." *Arundel Corp. v. Halter*, 223 Md. 247, 250 (1960).

MacDonald did not respond to this motion, nor did she file her discovery responses. On April 18, 2016, the court granted Erie's motion and ordered that the case be dismissed with prejudice. MacDonald noted this timely appeal.

DISCUSSION[4]

MacDonald contends that the trial court erred in granting Erie's motion for sanctions because her case was never heard on the merits. She maintains that Erie "deceptively" maneuvered her into a situation where the court granted Erie's motion for sanctions "based on a totally false premise." She asks this Court to review the merits of her contract claim, and she asserts that Erie's counsel violated various provisions of the Rules of Professional Conduct. Although MacDonald provides reasons for her failure to provide discovery – chronic illness, disability, intimidation – at no point does she state that she provided discovery responses or direct our attention to them in the record.

The purpose of the discovery rules "'is to require the disclosure of facts by a party litigant to all of his adversaries, and thereby to eliminate, as far as possible, the necessity of any party to litigation going to trial in a confused or muddled state of mind, concerning

[4] Preliminarily, we note that MacDonald's brief is almost void of citations to legal authority for her argument as to the motion for sanctions. Rule 8-602 provides this Court with the authority to dismiss an appeal for failure to abide by the rules of appellate procedure, which includes citing legal authority in briefs. *See* Rule 8-504(c); *Brass Metal Prods., Inc. v. E-J Enters., Inc.*, 189 Md. App. 310, 343 (2009) (stating that appellate court will dismiss arguments not supported by legal authority). Reaching a decision on the merits of a case is, however, the "'preferred alternative.'" *McAllister v. McAllister*, 218 Md. App. 386, 399 (2014) (quoting *Joseph v. Bozzuto Mgmt. Co.*, 173 Md. App. 305, 348 (2007)). Because we do not perceive that Erie has suffered prejudice from MacDonald's procedural shortcomings, we will address the merits of the case. *See id.* (noting policy of deciding case on merits where appellee does not suffer prejudice).

the facts that gave rise to the litigation.'" *Tempel v. Murphy*, 202 Md. App. 1, 17 (2011) (emphasis omitted) (quoting *Potter Hayden Co. v. Bullinger*, 350 Md. 452, 460 (1998)). The Court of Appeals has observed that trial judges "'are vested with a reasonable, sound discretion in applying [the discovery rules], which discretion will not be disturbed in the absence of a showing of its abuse.'" *Ehrlich v. Grove*, 396 Md. 550, 560 (2007) (quoting *E. I. du Pont de Nemours & Co. v. Forma-Pack, Inc.*, 351 Md. 396, 405 (1998)). An abuse of discretion occurs where the decision under consideration "is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011) (quoting *King v. State*, 407 Md. 682, 711 (2009)).

Rule 2-433(a) provides that courts may sanction litigants for failure to provide discovery. Dismissal is a permissible sanction. *See* Rule 2-433(a)(3). This Court has observed that "[t]here need not be 'willful or contumacious behavior' by a party to justify imposing sanctions." *Valentine-Bowers v. Retina Grp. Of Wash., P.C.*, 217 Md. App. 366, 378 (2014) (quoting *Warehime v. Dell*, 124 Md. App. 31, 44 (1998)). Indeed, our review of a trial judge's ruling as to sanctions is "'quite narrow'" because we "'are reluctant to second-guess the decision of a trial judge to impose sanctions for a failure of discovery.'" *Id.* (emphasis omitted) (quoting *Sindler v. Litman*, 166 Md. App. 90, 123 (2005)).

In this case, we do not perceive an abuse of discretion in the trial court's order granting the sanction of dismissing MacDonald's case. On appeal, MacDonald argues that the court should have granted her more time to respond because she did not receive the court's order compelling discover in a timely fashion. As we have noted, parties are held

to be on notice of the docket entries in their cases. *See Halter*, 223 Md. at 250. Additionally, MacDonald contends that there was no hearing as to the motion for sanctions, and the court cannot rule without a hearing that she requested pursuant to Rule 2-311(f).[5] The record reflects, however, that MacDonald never responded to Erie's motion for sanctions, much less requested a hearing. Moreover, MacDonald overlooks the fact that she failed to file discovery responses after months of frequent communication with Erie, an order compelling discovery, the court's reminder of the order, and a motion for sanctions. Requiring Erie to proceed to trial without *any* discovery from MacDonald would violate the purpose of the discovery rules, and we do not perceive an abuse of discretion in the circuit court's order.

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

[5] Rule 2-311(f) provides that a party may request a hearing on a motion in writing, and, unless otherwise provided by rule, "the court shall determine in each case whether a hearing will be held, but the court may not render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section."