Circuit Court for Baltimore County
Case No.: C-03-CV-24-001408

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 28

September Term, 2025

NELDA FINK

v.

PEVCO SYSTEMS
INTERNATIONAL, INC., *et al.*

Wells, C.J.,
Graeff,
Berger,

JJ.

PER CURIAM

Filed: January 2, 2026

*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.

Appellant Nelda Fink appeals from an order by the Circuit Court for Baltimore County dismissing her complaint against appellees Pevco Systems International, Inc, and Lauren Upton, Esq.. On appeal, Fink presents six questions for our review, which we reduce to two and rephase as:

1. Did the circuit court err in dismissing the complaint for failure to state a claim?
2. Did the circuit court abuse its discretion in denying leave to amend?

For the reasons below, we shall affirm.

BACKGROUND

Because this is an appeal from the granting of a motion to dismiss, the "universe of facts" relevant to our analysis is "limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any." *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (2010) (cleaned up). We set forth those facts—which we must assume are true—in the light most favorable to Fink. *See id.*

Fink began working for Pevco in September 2009. During the COVID-19 pandemic, Pevco implemented an indoor mask policy that did not allow any exceptions. In early 2020, Fink and Pevco reached a "verbal agreement" that she "would continue working from [Pevco's] Baltimore County office during the state of emergency." At some point, Pevco "coerced" Fink "to obtain detailed medical information with the threat of employment termination if not provided[.]"

In April 2021, Pevco directed Fink to work remotely. Fink was concerned with her productivity level, so, the next month, she requested to return to the office. On May 12, 2021, Pevco terminated her employment. Fink then applied for unemployment benefits,

which Pevco contested. Although her claim was denied at first—which the Circuit Court for Anne Arundel County affirmed—this Court ultimately reversed that decision. *See In the Matter of Nelda Fink*, No. 1604, Sept. Term, 2022 (filed Oct. 10, 2023) (unreported). Upton represented Pevco during those judicial proceedings.

In April 2024, Fink sued Pevco and Upton, alleging four counts of wrongful termination and one count of abuse of process. Upton moved to dismiss for failure to state a claim, but the circuit court, instead, granted Fink leave to amend. Fink filed her First Amended Complaint in July 2024, in which she amended only the abuse-of-process count by adding additional facts about Upton's representation of Pevco; she did not change anything else. Upton again moved to dismiss for failure to state a claim, and Pevco soon did so as well. But, instead, the circuit court again granted Fink leave to amend.

Fink filed her Second Amended Complaint in October 2024, alleging fewer facts than either previous version. Again, Upton and Pevco separately moved to dismiss. This time, however, the court denied Fink leave to amend because "[t]he proposed [a]mendment w[ould] cause a further delay without addressing the substantive grounds in support of" Upton's and Pevco's motions. Even so, Fink orally renewed her request for leave to amend at the hearing on Upton's and Pevco's motions in December 2024. The court held the matter *sub curia*, but it ultimately denied Fink leave to amend and dismissed her complaint for failure to state a claim. Fink moved for reconsideration, which was denied, and then timely appealed.

DISCUSSION

I. Dismissal

We review the granting of a motion to dismiss to determine whether the circuit court's decision was legally correct. *See Tavakoli-Nouri v. State*, 139 Md. App. 716, 725 (2001). In doing so, "we view the well-pleaded facts of the complaint in the light most favorable to the appellant[.]" *Id.* (cleaned up). To survive dismissal, the complaint must plead the material facts "with sufficient specificity. Bald assertions and conclusory statements by the pleader will not suffice." *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000) (cleaned up). Thus, we will affirm a dismissal "if the complaint does not disclose, on its face, a legally sufficient cause of action." *Rossaki v. NUS Corp.*, 116 Md. App. 11, 18 (1997) (cleaned up).

A. Wrongful Discharge

To adequately plead a claim of wrongful discharge, a complaint must allege: (1) that the employee was discharged; (2) that the discharge "violat[ed] some clear mandate of public policy"; and (3) that there is a "nexus between the employee's conduct and the employer's decision to fire the employee." *Wholey v. Sears Roebuck*, 370 Md. 38, 50–51 (2002). This case concerns only the second element. To plead this element, the employee must identify "the policy in question with clarity, specificity, and authority." *Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 495 (1995).

The operative complaint here failed to identify any clear mandate of public policy or plead facts sufficient to show that Pevco violated such policy. *Count One* alleged that Pevco violated emergency executive orders concerning indoor mask mandates by failing

to provide for a required exception. But the complaint fails to identify any specific executive order or any applicable exception, and it fails to state any facts explaining how Pevco's policy violated the unidentified order.

Count Two alleged that "Pevco violated the OSHA General Duty Clause by failing to provide a workplace free from recognized hazards, as evidenced by their improper enforcement of the indoor mask policy." *See* 29 U.S.C.A. § 654(a)(1). To be sure, OSHA's General Duty Clause could conceivably qualify as a public policy mandate. *See Bleich v. Florence Crittenton Servs. of Balt., Inc.*, 98 Md. App. 123, 134 (1993). But the complaint does not offer any facts showing how Pevco's indoor masking policy—implemented during a global pandemic—created a workplace hazard that "caus[ed] or [was] likely to cause death or serious physical harm to [its] employees[.]" 29 U.S.C.A. § 654(a)(1).

Count Three alleged that Pevco "violated Maryland Medical Privacy Laws by coercing [Fink] into disclosing protected medical information under the threat of termination." Even if the authorities cited in the complaint[1] qualified as public policy mandates, employers are not *per se* prohibited from seeking medical information from an employee. *Cf. Tarquinio v. Johns Hopkins Univ. Applied Physics Lab*, Civil Action No.

[1] The complaint cites to the Maryland Medical Records Act (Md. Code Ann., Health-Gen. §§ 4-301–4-310) and Maryland's general anti-discrimination statute (Md. Code Ann., State Gov't § 20-602). We note that it is unlikely either of these statutes could support a claim of wrongful discharge because the tort "is inapplicable where the public policy sought to be vindicated . . . is expressed in a statute which carries its own remedy for violation of that public policy." *Wholey*, 370 Md. at 52 (citing *Makovi v. Sherwin-Williams Co.*, 316 Md. 603, 609 (1989)). The Medical Records Act provides a remedy in § 4-309, and Maryland and federal anti-discrimination laws, likewise, provide remedies, *see Makovi*, 316 Md. at 609.

23-0727, 2024 WL 1604493, at *5 (D. Md. Apr. 11, 2024) (holding that employer did not violate the Americans with Disabilities Act by seeking medical information from employee to determine whether requested exemption from COVID vaccination policy should be granted as a reasonable accommodation), *aff'd*, 141 F.4th 568 (4th. Cir.), *cert. denied*, -- S. Ct. ---, 2025 WL 3131850 (Mem.) (2025). And, here, the complaint does not state any facts establishing what information Pevco requested or why it requested that information or how the request violated any public policy mandates.

Finally, *Count Four* alleged that, by ordering her to work remotely, Pevco breached a verbal agreement with Fink that she "would work from the Baltimore office during the state of emergency." To allege a breach of contract, a complaint "must of necessity allege with certainty and definiteness facts showing a contractual obligation owed by the defendant to the plaintiff and a breach of that obligation by defendant." *RRC Ne.*, 413 Md. at 655 (cleaned up). The complaint here states in conclusory fashion that the parties' agreed that Fink would work from the Baltimore office, but it does not allege an explicit or implicit promise by Pevco to be bound by that agreement or that Fink provided any new or additional consideration in exchange. *See id.* at 658.

In sum, Counts One through Four of the Second Amended Complaint contained nothing more than bald assertions and conclusory statements that Pevco had violated public policies or breached an alleged contract. There were no facts alleged sufficient to state any claim for wrongful discharge, and the circuit court, therefore, did not err in dismissing these counts.

B. Abuse of Process

To adequately plead a claim of wrongful discharge, a complaint must allege: (1) "that the defendant willfully used process, such as a subpoena or a protective order, after it has issued in a manner not contemplated by law"; (2) "that the defendant acted to satisfy an ulterior motive"; and (3) "that damages resulted from the defendant's perverted use of process." *Charles v. Charles*, 265 Md. App. 631, 649 (cleaned up), *cert. denied sub nom.*, *Charles v. Summerfield*, 2025 WL 3177363 (Table) (filed Oct. 27, 2025). "The mere issuance of process itself . . . is not actionable, even if it is done with an ulterior motive or bad intention." *Campbell v. Lake Hallowell Homeowners Assoc.*, 157 Md. App. 504, 530 (2004) (cleaned up). Instead, the complaint must allege "some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process[.]" *Id.* (cleaned up).

The complaint here alleged that "Pevco engaged in bad faith legal actions, through appealing [Fink's] approved Unemployment Benefits without merit[]" and that "[a]fter the bad faith legal process had initiated (issued), [] Upton joined [] Pevco and together continued the bad faith meritless process." Even if Pevco's administrative appeal challenging Fink's unemployment benefits constituted "process," *see* Md. Rule 1-202(y), the complaint does not state any facts showing that it was anything other than the regular use of process. Likewise, the complaint does not allege any definite act or threat by Pevco or Upton not authorized by the process. It contained only bald allegations and conclusory statements insufficient to state a claim for abuse of process. Thus, the circuit court did not err in dismissing this count.

II. Leave to Amend

We review the denial of a request for leave to amend for abuse of discretion, *see Higginbotham v. Pub. Serv. Comm'n of Md.*, 171 Md. App. 254, 275–76 (2006), mindful "that leave to amend complaints should be granted freely . . . and that it is the rare situation in which a court should not grant leave to amend[.]" *RRC Ne.*, 413 Md. at 673. *See also* Maryland Rule 2-341(c). That said, leave to amend should not be allowed if it would cause prejudice to the opposing party or undue delay, or if a claim is irreparably flawed such that an amendment would be futile. *Id.* at 673–74.

The record here shows that Fink was given multiple opportunities to remedy the deficiencies in her complaint—each time Upton or Pevco moved to dismiss, Fink moved for, and was granted, leave to amend. Yet she still failed to allege any facts sufficient to state a claim for relief. Indeed, the Second Amended Complaint, which was Fink's third pleading attempt, alleged fewer facts than either of the previous versions of her complaint. The circuit court recognized that allowing Fink to keep trying to fix the pleading defects would prejudice Upton and Pevco and cause undue delay. Consequently, it did not abuse its discretion in denying Fink leave to amend.

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