Circuit Court for Wicomico County
Case No. C-22-CV-21-000273

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 0400

September Term, 2022

KIYA JAMAR AMAJIOYI

v.

MURRAY K. HOY

Kehoe,
Beachley,
Tang,

JJ.

Opinion by Tang, J.

Filed: January 10, 2023

*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.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In the Circuit Court for Wicomico County, appellant, Kiya Jamar Amajioyi, filed a wrongful termination lawsuit against appellee, Murray Hoy, in connection with appellant's employment at Wor-Wic Community College. The one-page complaint alleged that, while he was employed at the college, appellant was discriminated against based on his race, gender, and religion. Upon motion by appellee and after a hearing, the court dismissed the complaint with prejudice.

On appeal, appellant presents one question for our review, which we have rephrased for clarity:[1]

Did the circuit court err in dismissing appellant's complaint without leave to amend?

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

[1] The question raised by appellant in his brief is:

> 1. Was the trial court's granting of the Appellee's Motion to Dismiss legally correct when Maryland Rule 2-341(c) states that an amendment to a pleading can "set forth a better statement of facts concerning any matter already raised in a pleading," "correct misnomer of a party," and "make any other appropriate change"?

Appellant did not specifically raise in his "Question Presented" for appellate review whether the court erred in dismissing the complaint (outside the framework of dismissal *without leave to amend*). *See* Md. Rule 8-504(a)(3) (providing that an appellate brief shall include a "statement of the questions presented, separately numbered, indicating the legal propositions involved"). At oral argument, appellant confirmed that his sole contention is that the court erred in not granting him leave to amend his complaint. Accordingly, our review does not encompass the issue of whether the court erred in dismissing the complaint.

BACKGROUND AND PROCEDURAL HISTORY

Appellant was employed by Wor-Wic Community College. On November 27, 2018, the college discharged him from employment.[2] On October 25, 2021, appellant filed a *pro se* complaint against appellee in the Circuit Court for Wicomico County. The complaint, in its entirety, alleged the following:

> In a cause of action for WRONGFUL TERMINATION, the rule of law in Maryland for employment at-will is that illegal discrimination based on such categories as race, color, gender, national origin, religion, age, disability, or marital status warrants as the exception. In addition, another at-will exception includes laws which protect employees from termination or retaliation for asserting rights to work in a safe and healthy workplace. Terminating an employee for any of these specific reasons may constitute a violation under the applicable State or federal law. The plaintiff, while employed at Wor-Wic Community College, was subject to illegal discrimination based on race, gender, and religion in addition to retaliation for making the College and other agencies aware of the discrimination as well as perpetual harassment from a nonemployee on site. These actions caused the plaintiff to suffer irrevocable pain and suffering that dealt with extreme mental anguish, emotional pain, comfort, and protection both then and now. The defendant is responsible for the plaintiff's pain and suffering, and the plaintiff is entitled to compensation from the defendant.
>
> The plaintiff asserts claims for illegal discrimination, retaliation, harassment, and intentional infliction of emotional distress, which constitutes a violation of CIVIL RIGHTS. The plaintiff also claims negligent hiring for some of the employees who took part in these wrongful acts since they had a history of being heavily biased, as well as a conflict of interest.

[2] Around February 2019, appellant filed a charge of discrimination with the Maryland Commission on Civil Rights, alleging that he was discharged from his employment as a result of discrimination associated with, *inter alia*, his race, religion, national origin, and sex. At the end of September 2019, the Commission issued appellant a dismissal and notice of rights, explaining that the "available evidence does not establish a violation of the statute(s)."

Appellee filed a motion to dismiss the complaint or, in the alternative, motion for summary judgment ("Motion"). Appellee's argument was threefold: (1) the complaint was devoid of facts to support how appellant's employer acted in a discriminatory manner; (2) the complaint did not contain any facts to support any of the purported causes of action; and (3) appellant's employment discrimination action was barred by the statute of limitations.[3]

Instead of filing an amended complaint, pursuant to Maryland Rule 2-341(a), to cure the pleading deficiencies alleged by appellee,[4] appellant opposed the Motion, contending that he adequately stated causes of action "for wrongful termination, and also intentional infliction of emotional distress and negligent hiring." In the opposition, appellant included and referenced twelve exhibits that purportedly established facts to support his claims.

[3] Regarding the third ground, appellee explained that an action for a state violation of unlawful employment practice must be filed within two years after the alleged practice occurred, or if the complaint alleged harassment, within three years after the alleged harassment occurred. Md. Code Ann., State Gov't § 20-1013 (1973, Repl. Vol. 2022). Appellee attached to the Motion the February 2019 charge of discrimination, *see* n.2, which indicated that appellant was terminated from employment on November 27, 2018 (appellant confirmed, in his opposition, that he was "dismissed" on that date). On that premise, appellee maintained that appellant was required to file his complaint by November 27, 2020. Although the statute extends the limitations period to three years where harassment is alleged, appellee argued that the complaint did not contain any factual allegations to support the claim. *See* n.5.

[4] This Rule allows a plaintiff to amend the complaint without leave of court. An amended complaint, if filed, would serve as the operative complaint, rendering a pending motion to dismiss the original complaint moot. *See Asphalt & Concrete Servs., Inc. v. Perry*, 221 Md. App. 235, 267 (2015) ("An amended complaint supersedes the initial complaint, rendering the amended complaint the operative pleading.") (citing *Gonzales v. Boas*, 162 Md. App. 344, 355 (2005)).

Appellant urged the court to deny the Motion because he alleged sufficient facts to support each cause of action and generated genuine disputes of material fact to defeat the Motion. Nowhere in his opposition did appellant request leave to amend his complaint.

On April 1, 2022, the court heard oral arguments on the Motion. Relying on his opposition, appellant explained, "I pretty much included [in the opposition] all the information that they were pretty much saying that they didn't initially have in the complaint." At the conclusion of the hearing, the court granted the motion to dismiss, based primarily on appellant's failure to allege sufficient facts in the complaint to support any cause of action.[5] At no time during the hearing or after the court's ruling did appellant seek leave to amend the complaint. Thereafter, the court entered an order dismissing the complaint with prejudice, and appellant timely appealed.

STANDARD OF REVIEW

Under Maryland Rule 2-322(c), "[i]f the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend." "The determination . . . to grant leave to amend pleadings is within the sound discretion of the trial judge." *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443-44 (2002); *see also Robertson v. Davis*, 271 Md. 708, 710 (1974). Therefore, the circuit court's decision

[5] The court granted dismissal on an alternate basis, namely, that the claims were barred by the statute of limitations. We need not address whether the court erred in granting dismissal on this ground because appellant neither raised nor argued this issue in his principal brief. *See* n.1; *see, e.g., Peterson v. Evapco, Inc.*, 238 Md. App. 1, 62 (2018) (declining to address appellants' "catch-all argument" made in the brief, noting that appellants "can waive issues for appellate review by failing to mention them in their 'Questions Presented' section of their brief") (citation omitted).

to deny leave to amend will be reversed only upon a finding that the court abused that discretion. *See Schmerling*, 368 Md. at 444.

DISCUSSION

Appellant's sole contention on appeal is that the "trial court's decision to not permit an amendment for the cause of action was not legally correct[.]" He argues that the court should have granted him leave to amend the complaint based on the additional facts proffered in his opposition to the Motion.

Appellant's argument is not preserved for appellate review. Ordinarily, the appellate court will not decide any issue "unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). As the Supreme Court of Maryland[6] has explained,

> the purpose of the preservation rule is to prevent unfairness and require that all issues be raised in and decided by the trial court, and these rules must be followed in all cases. Put another way, the rule exists to prevent sandbagging and to give the trial court the opportunity to correct possible mistakes in its rulings. An appeal is not an opportunity for parties to argue the issues they forgot to raise in a timely manner at trial. Nor should [a litigant] rely on this Court, or any reviewing court, to do their thinking for them after the fact.

Peterson v. State, 444 Md. 105, 126 (2015) (cleaned up) (quotations and citations omitted).

[6] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

The decisions of our appellate courts have made clear that a party must request leave to amend a complaint to preserve his right to present this issue on appeal. *See Bender v. Schwartz*, 172 Md. App. 648, 689 (2007) (held that the court's failure to grant leave to amend the complaint was not error where appellants failed to request leave to amend); *Carder v. Steiner*, 225 Md. 271, 277 (1961), *overruled on other grounds by James v. Prince George's County*, 288 Md. 315 (1980) (held that a plaintiff, who did not ask for leave to amend below and was not able to state at argument on appeal in what respect the complaint could be amended so as to overcome the objections, was not entitled to remand to permit amendment); *Noellert v. Noellert*, 169 Md. 559, 562-63 (1936) (decree sustaining demurrer without leave to amend would not be reversed where appellant did not request leave to amend); *Frisch v. City of Baltimore*, 156 Md. 310, 313 (1929) ("In the absence of [an] application [for leave to amend], we do not think the appellant is in a position to ask for a reversal on the ground that an opportunity to amend was withheld."). Had appellant requested leave to amend, the court would have been required to exercise its discretion. Because appellant did not make such request, as he conceded at oral argument, "[t]here is nothing in the record before us to indicate such an abuse of discretion." *Noellert*, 169 Md. at 563.

In his reply brief, appellant argues that the court never informed him that he could have filed an amended complaint or sought leave to do so. Absent this information, he instead relied on the summary judgment rule, identified "each material fact as to which it

was contended that there is a genuine dispute," and included in his opposition exhibits with additional information that could have been incorporated into an amended complaint.

First, appellant's argument is based on a misunderstanding of the court's role. The court, as an impartial referee between adversaries, "cannot be an advocate for one side or the other" and "is in no one's corner." *Tretick v. Layman*, 95 Md. App. 62, 78 (1993). For this reason, trial courts should refrain from making suggestions to parties about how to proceed with their lawsuit. Second, appellant did not argue below that the additional facts supported a basis for the court to grant him leave to amend the complaint, nor could he, because he never sought such leave. Lacking any such request, appellant cannot now attempt to seek reversal on the ground that leave to amend was improperly withheld. *Frisch*, 156 Md. at 313; *see* Md. Rule 8-131(a). For these reasons, we affirm the judgment of the circuit court.

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