Circuit Court for Anne Arundel County
Case No. C-02-CV-23-000923

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 750

September Term, 2024

ANDREA DWYER

v.

PATRICIA NAY, ET AL.

Berger,
Friedman,
Hotten, Michele D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 6, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

In this appeal, we are asked to determine whether the Circuit Court for Anne Arundel County erred in dismissing appellant Andrea S. Dwyer's complaint. For the reasons that follow, we affirm.

BACKGROUND

Dwyer is the former Administrator of Sagepoint Nursing and Rehabilitation Center located in La Plata, Maryland. The Office of Health Care Quality is the agency within the Maryland Department of Health charged with monitoring the quality of care in Maryland's health care facilities and community-based programs, including nursing homes. According to OHCQ's website it serves four functions: (1) issuance of State licenses; (2) conducting certification on behalf of the federal Centers for Medicare and Medicaid Services; (3) surveying providers to determine compliance with federal and State regulations; and (4) providing technical assistance to service providers. https://health.maryland.gov/ohcq/Pages/home.aspx (last visited Feb 19, 2026).

As best we understand it, OHCQ conducted a survey during April and May of 2020, determined that Sagepoint had failed to deal appropriately with the COVID-19 outbreak, issued a Notice of Deficiencies and a Statement of Deficiencies, and imposed civil fines. Sagepoint challenged the administrative action before an Administrative Law Judge (ALJ) at the Office of Administrative Hearings (OAH). That ALJ found for Sagepoint and, in a very thorough 48-page opinion, proposed an Order reversing the civil fines. The circuit court adopted the ALJ's findings and reversed the proposed fine.

Dwyer thereafter filed suit in the Circuit Court for Anne Arundel County against several employees of OHCQ: Patricia T. Nay, Adam Jenkins, Wendi Beckley, Fran Phillip, and Diana Boellner.[1] The circuit court (Asti, J.) dismissed Dwyer's complaint on three independent bases: (1) the qualified immunity provided to State personnel by Section 5-522(b) of the Courts and Judicial Proceedings Article of the Maryland Code; (2) failure to state a claim upon which relief can be granted under Maryland Rule 2-322(b)(2), (c); and (3) insufficiency of service of process under Maryland Rule 2-322(a)(3), (c). Dwyer noted a timely appeal in which she challenges the dismissal.[2]

[1] It is not plain from the complaint or the attached exhibits who these defendants are or what they are alleged to have done. From other documents in the record, we understand that Dr. Nay is the Executive Director of OHCQ, while Jenkins and Beckley were both nurse surveyors who conducted the on-site survey at Sagepoint. Jenkins, Beckley, and Dr. Nay all testified as witnesses at the administrative hearing described above. All we have been able to discern about Boellner and Phillips, however, is that they conducted "off-site reviews of [Sagepoint's] policies and patient's medical records" in some unknown capacity. We also note that the Complaint named Ciara Lee, Stevanne Ellis, and "Unnamed Medical Directors for [OHCQ]" as defendants. Those parties were voluntarily dismissed by Dwyer, so we shall not discuss them further.

[2] Dwyer also challenges the circuit court's refusal to permit her to file an amended complaint. Prior to the hearing on the defendants' motion to dismiss, Dwyer could have amended her complaint without leave of court. MD. RULE 2-341(a). After the dismissal, however, the rules change and a plaintiff can only amend the complaint with the court's permission. MD. RULE 2-322(c), 2-341(b). The circuit court denied that permission and, in light of the analysis in this opinion, we cannot see a way in which Dwyer could have successfully pleaded a claim against these defendants. As a result, we do not view the circuit court's decision not to permit a futile amendment to have been an abuse of its broad discretion.

On its face, we understand Dwyer's complaint to describe three contentions.[3] First, that OHCQ "alleged that [Dwyer] personally had admitted to noncompliance."[4] Second, that OHCQ had falsely identified Dwyer "as responsible for the deaths of numerous residents under Sagepoint's care."[5] And, third, that OHCQ released the Statement of Deficiencies and Notice of Fine to the press early and in violation of federal regulations.[6]

ANALYSIS

As noted above, the circuit court granted the defendants' motion to dismiss.[7] As such the proceedings below were governed by Maryland Rule 2-322 and the caselaw that interprets that rule. The circuit court's job is to determine whether the plaintiff's complaint, on its face, pleads a legally sufficient cause of action. *Clark v. Prince George's County*, 211

[3] This is not to say that Dwyer doesn't have additional criticisms of OHCQ's survey or the Statement of Deficiencies. It is fair to infer that she has many. Rather, we mean to say only that on the face of her Complaint, Dwyer has made three contentions.

[4] We understand that the admission with which Dwyer is concerned appears on Page 2 of the Statement of Deficiencies, which was appended to the complaint as Exhibit B: "The Administrator acknowledged there was no master list or other process developed to track and ensure that results from all critical COVID lab tests sent to the lab were reported back to the nursing home timely."

[5] Here we gather that Dwyer is referring to the sentence at Page 4 of the Statement of Deficiencies that says: "As a result of this noncompliance, at the time the survey began, all residents, staff[,] and visitors had been placed at risk, 92 residents had become positive for COVID-19, and 29 of these residents had died."

[6] Dwyer's Complaint fails to identify which of the defendants did which of the acts. Throughout the Complaint, she blames instead the Department of Health, the OHCQ, or its unnamed agents and employees. This is insufficient as discussed below, but also makes it difficult for us to describe her allegations

[7] Because it is unnecessary to the outcome of the case, the record is confused on the point, and because the defendants are not particularly assertive in defending the circuit court's finding, we decline to reach the question of the sufficiency of the service of process.

Md. App. 548, 557 (2013). Thus, to survive a motion to dismiss, the plaintiff must allege with clarity and precision facts that, if proven, would afford the plaintiff relief. *Baltimore Police Dep't v. Cherkes*, 140 Md. App. 282, 330-31 (2001). If the motion to dismiss is granted, we review that decision without deference to the circuit court to determine whether it was legally correct. *Unger v. Berger*, 214 Md. App. 426, 432 (2013).[8]

Dwyer filed her complaint on May 8, 2023. Her complaint included three exhibits: a newspaper article, the Notice of Deficiency and the Statement of Deficiency; and the OAH Opinion. On April 2, 2024, Dwyer filed a document that she titled "Reply Brief of Plaintiff Rebuttal to Memorandum Filed by Defendant[s] for Motion to Dismiss." At the hearing below and in her brief to this Court, Dwyer seems to misunderstand the legal significance of this document. A motion to dismiss tests the sufficiency of the allegations in the complaint itself. We generally don't consider anything but the complaint itself. There is an exception, which permits a pleader to attach relevant documents to a complaint and adopt those other documents by reference as part of the complaint. MD. RULE 2-303(d). Thus, the newspaper article, the Notice and Statement of Deficiency, and the OAH Opinion are considered part of Dwyer's complaint.[9]

[8] Dwyer's brief features citations to federal cases interpreting the federal rules of civil procedure. Those cases are not mandatory precedents that this Court must follow, but merely persuasive authority that we may follow so long as there is not a contrary decision of the Supreme Court of Maryland on point. Here, the law of Maryland is different than the federal law and, as a result, we are not persuaded by those citations.

[9] There was apparently some confusion at the hearing in the circuit court about the status of these exhibits, but ultimately they were considered as part of the complaint, Dwyer

The same, however, is not true of Dwyer's "Reply Brief of Plaintiff Rebuttal to Memorandum Filed by Defendant[s] for Motion to Dismiss." We understand that she hoped to add facts and flesh out her complaint in that 48-page document.[10] That is not, however, appropriate. To change a complaint (and have those changes considered on a motion to dismiss) a plaintiff must amend the pleadings according to the rubric set forth in Rule 2-341. Dwyer's "Reply Brief of Plaintiff Rebuttal to Memorandum Filed by Defendant[s] for Motion to Dismiss" was not an amendment to the complaint but was rather a response to the Defendant's motion to dismiss. Such a response is perfectly acceptable and anticipated by the Rules. MD. RULE 2-311(b).[11] But a response to a motion cannot amend a complaint—only an amendment may.

As a result, the circuit court correctly considered Dwyer's complaint and the exhibits thereto, but ignored for the purposes of the motion to dismiss, any new facts added by Dwyer's "Reply Brief of Plaintiff Rebuttal to Memorandum Filed by Defendant[s] for Motion to Dismiss." We must and will similarly confine ourselves to the correct universe of facts and consider only those set forth in the complaint and exhibits and ignoring any new facts added by Dwyer's reply or briefing in this Court.

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was permitted to comment about them, and we have assumed that they were incorporated by reference (despite that they did not comply with the strictures of Rule 2-303(d)).

[10] Dwyer also expected to be able to flesh out her complaint in the discovery process. That is simply not how it works. A plaintiff must be able to plead all of the elements of the cause of action by the time of filing the complaint.

[11] To the extent it contained new facts, Dwyer's response should have been, but was not, supported by an affidavit. MD. RULE 2-311 (d).

I. THESE DEFENDANTS ARE IMMUNE FROM SUIT

The State has advanced two theories of immunity which it argues that these defendants possess: (1) an absolute quasi-prosecutorial immunity under the common law of Maryland; and (2) a qualified State personnel immunity provided by statute. Because it is unclear from the transcript on which of these immunities the circuit court based its dismissal and because these defendants possess both, we shall address them each briefly.

A. Dwyer's Claims are Barred by Absolute Immunity

State administrative officers and employees acting in a quasi-prosecutorial role in State administrative proceedings are entitled to absolute immunity so long as those administrative proceedings afford safeguards to protect from otherwise unlawful conduct by the State employees. *Board of Physicians v. Geier*, 241 Md. App. 429, 519-20 (2019). As must be clear, each of Dwyer's contentions arose from the defendants' quasi-prosecutorial function to assure compliance with nursing home regulation.[12] Moreover, it is clear that the administrative proceedings at OAH provided the procedural safeguards that we required in *Geier*. The ALJ not only noted that there was a dispute about Dwyer's alleged admission, ("Dwyer disputes that conversation"), but specifically accepted Dwyer's version of events, ("I find Ms. Dwyer's testimony credible"). Similarly, the Opinion not only provided a forum in which Dwyer and Sagepoint could deny that they

[12] There can be no doubt that the employees of OHCQ were performing a quasi-prosecutorial function while surveying Sagepoint in precisely the same way the Board of Physicians and its employees were doing investigating the Geiers in *Board of Physicians v. Geier*, 241 Md. App. 429 (2019).

were responsible for the residents' deaths, OAH indeed found that Dwyer and Sagepoint "did not have any deficiencies at its Facility that posed a serious and immediate risk to any of its residents." Finally, although it was not raised at the OAH, we have no doubt that if it had been raised, the ALJ would have addressed the allegedly unlawful public distribution of the Statement of Deficiencies. We note that in the *Geier* case, the unlawful conduct alleged by the defendants was improper publication of regulatory findings and those defendants were accorded absolute immunity. *Geier*, 241 Md. App. at 472-73. There is no reason that a different result should apply here. Therefore, because the OHCQ employees were acting in a quasi-prosecutorial function in a State administrative proceeding that provided sufficient safeguards, those employees were absolutely immune from suit. The circuit court did not err in recognizing and applying this common law immunity.

B. Dwyer's Claims are Barred by Qualified Immunity

State personnel also have statutory qualified immunity pursuant to Section 5-522(b) of the Courts Article:

> State personnel … are immune from suit in courts of the State and from liability in tort for a tortious act or omission that is within the scope of the public duties of the State personnel and is made without *malice* or *gross negligence*, and for which the State or its units have waived immunity …, even if the damages exceed the limits of that waiver.

MD. CODE, COURTS & JUDICIAL PROC. ("CJ") § 5-522(b) (emphasis added).[13] As noted above, the circuit court dismissed Dwyer's complaint on the basis of immunity, although it

[13] Dwyer generally recognizes that this is a statutory qualified immunity, although her brief often relies on cases discussing federal qualified immunity, an entirely distinct doctrine.

is unclear whether the court meant the common law absolute immunity described above, or this statutory qualified immunity. Dwyer argues that she pleaded "malice" and "gross negligence" sufficiently in her complaint that her claims should survive a motion to dismiss.

The words "malice" and "gross negligence" have carefully circumscribed, judicially-defined meanings. "Malice" means that a State employee "intentionally performed an act without legal justification or excuse, but with an evil or rancorous motive influenced by hate, the purpose being to deliberately and willfully injure the plaintiff." *Thacker v. City of Hyattsville*, 135 Md. App. 268, 300 (2000). "'[G]ross negligence' is an intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another, and also implies a thoughtless disregard of the consequences without the exertion of any effort to avoid them." *Stracke v. Est. of Butler*, 465 Md. 407, 420-21 (2019) (quoting *Barbre v. Pope*, 402 Md. 157, 187 (2007)). As this Court has repeatedly stated: "A conclusory allegation that a public official [or employee] acted 'maliciously,' without any supporting allegation of fact, is insufficient to defeat a motion to dismiss on the ground of public official [or employee] immunity." *Bord v. Baltimore County*, 220 Md. App. 529, 557-58 (2014). We, therefore, review each of Dwyer's assertions of malice or gross negligence to determine if they are sufficiently pleaded:

- On Page 1 of her complaint, in a list of causes of action, Dwyer accuses the defendants of "Negligence w/*Malice*" and "Aiding and abetting *malicious*

use of process." (emphasis added).[14] As to the first of these causes of action, it is a logical impossibility as negligence implies the absence of intent, while malice necessitates a specific finding of intent. *See Shoemaker v. Smith*, 353 Md. 143, 168 (1999) ("the determination of malice, in particular, involves findings as to the defendant's intent and state of mind"); *Ghassemieh v. Schafer*, 52 Md. App. 31, 40 (1982) (quoting *Adams v. Carey*, 172 Md. 173, 186 (1937) ("the absence of intent is essential to the legal conception of negligence"). Irrespective of that, however, these mentions of malice or its variants in the list of the causes of action are, by themselves, insufficient to survive a motion to dismiss based on qualified immunity.

- In Paragraph 9 of her Complaint, Dwyer alleges that unidentified "agents" and "supervisors" "falsely and maliciously" alleged that Dwyer admitted noncompliance. In support of that, Dwyer further alleges that at the administrative proceeding, these still-unnamed "agents" and "supervisors" admitted that they had lied about this admission.[15] Although Dwyer describes the allegation that she had admitted noncompliance as "malicious," she provides no facts from which a court could infer that it was done with an "evil or rancorous motive" or that its purpose was to "deliberately and willfully injure." *Smith v. Danielczyk*, 400 Md. 98, 109 (2007). This allegation is insufficient, therefore, to survive a motion to dismiss based on qualified immunity.
- Also in Paragraph 9, the word "malicious" appears in the name of the tort of malicious use of process, but no facts are offered here to support the claim. This too is insufficient to survive a motion to dismiss based on qualified immunity.
- In Paragraph 11, Dwyer says that the unnamed agents of the Maryland Department of Health acted with "reckless disregard" and "with malice and gross indifference" but fails to say to which actions she is referring. It is insufficient to gesture vaguely and say, "everything." Instead, to defeat the statutory qualified immunity to which State personnel are entitled, one must plead (and subsequently prove) facts that demonstrate that they were acting with malice or gross negligence. The mere pleading of malice and gross

[14] As a separate problem, Dwyer's complaint contains an unnumbered and unelaborated-upon list of causes of action. This does not comply with Maryland Rule 2-303(a), which requires that "[e]ach cause of action shall be set forth in a separately numbered count." MD. RULE 2-303(a).

[15] As an aside, we have a hard time crediting Dwyer's account of this admission as the ALJ did not mention it in her opinion. Nevertheless, we must accept it as true at this stage of the proceedings.

negligence in Paragraph 11 is insufficient to defeat the defendants' qualified immunity. *See Ford v. Baltimore City Sheriff's Office*, 149 Md. App. 107, 121 (2002).

- Finally, in Paragraph 12 of her Complaint, Dwyer alleges that these unnamed State personnel acted with "gross negligence and malice." In the context in which these allegations appear, however, it is clear that Dwyer does not currently have any facts to suggest that any of these defendants had these mental states, but rather that she expected to receive those facts in the discovery process. ("…the discovery documentation will readily show …"). That is insufficient to defeat a motion to dismiss on the basis of qualified State personnel immunity.

We have combed through Dwyer's complaint and identified every mention of malice, gross negligence, or any mental state of the defendants. Each of these mentions is identified above. As must be clear, none of these alone, or all of them together, are sufficient to defeat the qualified State personnel immunity interposed on behalf of the defendants. We affirm the circuit court on this ground too.

II. THIS COMPLAINT FAILS TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED

A plaintiff must, at a minimum, allege facts to support each element of each cause of action. The circuit court found that Dwyer had failed these minimum pleading requirements, and we agree. We explain.

A. In All Counts, Dwyer Failed to Plead Facts Relative to Each Defendant

Dwyer's complaint does not identify—at all—which of the defendants did what to her. We don't know who conducted the survey. We don't know who made the statements. We don't know who leaked it to the press. The complaint does not say what any of these defendants did. That alone is a sufficient basis to dismiss the complaint, *Yuan v. Johns Hopkins Univ*., 227 Md. App. 554, 582-83 (2016), and we affirm on that basis.

B. Dwyer Fails to State a Claim for Defamation

On her list of causes of action, Dwyer lists "Defamation Per Se." It is clear that Dwyer is angered and embarrassed by two statements in the Statement of Deficiencies: the statement that she admitted noncompliance with the reporting requirements, reproduced *supra* note 4; and the statement that "as a result" of Sagepoint's noncompliance, residents became infected and died, reproduced *supra* note 5.

The tort of defamation has four elements: (1) a defamatory statement; (2) that was false; (3) that the defendant was legally at fault for making; and (4) damages. *Offen v. Brenner*, 402 Md. 191, 198 (2007). Assuming that Dwyer has sufficiently pleaded the first two elements, she has made no effort to plead the third and fourth elements. As discussed above, the defendants were acting in their roles as administrative prosecutors and were entitled to make the assertions found in the Statements of Deficiencies—even if they later turn out to be wrong. Thus, Dwyer cannot plead the third element of the tort. Moreover, she has not pleaded any damages caused by the alleged defamation. As a result, her complaint was deficient as a matter of law and the circuit court did not err in dismissing it.

C. Dwyer Fails to State a Claim for Negligence with Malice

Dwyer's list of causes of action includes a count for "Negligence w/Malice." There is no tort of negligence with malice in Maryland. By definition, a negligent act is performed *without* malice. Moreover, as discussed above, these defendants, as State employees, are immune from negligence actions. The circuit court was legally correct to dismiss this cause of action. We see no error here.

D. Dwyer Fails to State a Claim for Conspiracy Against Civil Rights

On her list of causes of action, Dwyer lists "Conspiracy Against Civil Rights." To properly plead a cause of action for conspiracy, the plaintiff must allege (1) an agreement or understanding between two or more persons; (2) to do something unlawful or tortious; and (3) that damages resulted. *Windesheim v. Larocca*, 443 Md. 312, 347-50 (2015). Here, Dwyer's complaint offers no factual allegations that support the existence of an agreement or understanding by anyone about anything much less to deprive her of a civil right.[16] And while it is obvious that she feels hurt and embarrassed, Dwyer has not alleged damages either.

E. Dwyer Fails to State a Claim for Aiding and Abetting the Malicious Use of Process

Dwyer lists "Aiding and Abetting malicious use of process" on her list of causes of action. The elements of a cause of action for aider and abettor liability are: (1) independent tortious activity by a direct perpetrator; (2) substantial assistance or encouragement by the indirect perpetrator; and (3) actual knowledge by the indirect perpetrator of the wrongful conduct. *Alleco, Inc. v. Harry & Jeanette Weinberg Found.*, 340 Md. 176, 199-201 (1995). Dwyer's complaint fails to identify either the direct or indirect perpetrators. Moreover, she has failed to properly plead the underlying tortious act, in this case, malicious use of

[16] It is also not clear from the complaint to which civil rights Dwyer was referring. Only when we received her brief to this Court did we learn that she was alleging violations of her constitutional rights under the First Amendment to the United States Constitution, and Articles 19, 24, and 40 of the Maryland Declaration of Rights. Given that she has failed to plead the conspiracy, however, the identity, source, and scope of those rights is not important to our analysis.

process. The tort of malicious use of process[17] itself has five elements that must be pleaded: that (1) a prior civil proceeding was instituted by the defendants; (2) the proceeding was instituted without probable cause; (3) the proceeding was instituted with malice; (4) the proceeding was terminated in favor of the plaintiff; and (5) the plaintiff suffered special or extraordinary damages. *Havilah Real Prop. Servs., LLC v. Early*, 216 Md. App. 613, 623-24 (2014). Although Dwyer's complaint touches on the first and fourth of these elements, she has not even attempted to plead the second, third, or fifth.[18] As a result, she has failed to plead the underlying tort of malicious use of process and, as a result, has failed to plead aider and abettor liability for the malicious use of process. There was no error in dismissing this cause of action.

F. Dwyer Fails to State a Claim for Intentional Infliction of Emotional Distress

Dwyer lists "Intentional Infliction of Emotional Distress" as her fifth cause of action. There are four elements that must be pleaded: (1) intentional or reckless conduct; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the conduct and the emotional harm; and (4) the emotional distress must be severe. *Harris v. Jones*, 281 Md. 560, 566 (1977). Each element of the tort must be pleaded with

[17] We are careful to note that Dwyer has attempted to plead the tort of malicious use of process, not the related but distinct tort of abuse of process. *See Campbell v. Lake Hallowell Homeowner's Ass'n,* 157 Md. App. 504, 529-34 (2004) (distinguishing these torts).

[18] It is also worth noting that malicious use of process is a disfavored claim in Maryland law. *See, e.g., Keys v. Chrysler Credit Corp.*, 303 Md. 397, 409-10 (1985); *Campbell,* 157 Md. App. at 532.

specificity. *Foor v. Juvenile Servs. Admin*., 78 Md. App. 151, 175 (1989). It is hard to say what sufficient specificity might look like because there is not a single reported appellate decision in which a plaintiff has sufficiently pleaded a claim. Here, Dwyer has failed to even attempt to show facts that would support a cause of action for intentional infliction of emotional distress. We see no error and affirm the dismissal of this count.

CONCLUSION

The defendants in this case are entitled to both absolute common law quasi-prosecutorial immunity and statutory State personnel qualified immunity. Moreover, Dwyer has failed to state a claim on which relief can be granted for any of her claims. As a result, the Circuit Court for Anne Arundel County was correct as a matter of law in dismissing this complaint and its judgment is affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS ASSESSED AGAINST APPELLANT, ANDREA DWYER.