

Circuit Court for Queen Anne's County  
Case No.: C-17-CV-20-000149

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 878

September Term, 2021

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IN THE MATTER OF VAN POWERS

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Graeff,  
Kehoe,  
Berger

JJ.

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Opinion by Kehoe, J.

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Filed: July 20, 2022

\*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.

This is an appeal from a judgment of the Circuit Court for Queen Anne’s County dismissing Van Powers’s civil action against Cheryl Capps a/k/a Cheryl Powers. The court dismissed the action pursuant to Md. Rule 2-507. Mr. Powers asserts that the circuit court erred in dismissing the case. We agree.

#### BACKGROUND

On August 19, 2020, Mr. Powers filed his civil action against Ms. Capps. In the complaint, he alleged that he and Ms. Capps had entered into a settlement agreement on September 1, 2017 which provided, among other things, that she would deliver a coin collection to him on or before September 5th of that year. The complaint alleged that, although there were 27 coins in the collection, she delivered only two and refused to deliver the remainder. The complaint set out twelve causes of action and sought various forms of relief, including specific performance as well as compensatory and punitive damages. On the same day, the clerk of the circuit court issued a summons to Mr. Powers for him to serve on Ms. Capps.

On December 14, 2020, Mr. Powers filed a motion asking the circuit court to permit his civil action against Ms. Capps to “lie dormant” until he located Ms. Capps. The motion related that, on September 22, 2020, Mr. Powers accompanied a private process server to Ms. Capps’s last known address but was informed that she had moved from the premises more than two years ago and that her current whereabouts were unknown. The motion further stated that he was in the process of hiring a private investigator to track down Ms. Capps’s current address for purposes of service of process. When she was

located, Mr. Powers would ask the clerk’s office to reissue the summons. The circuit court denied this motion on December 15, 2020.

On February 22, 2021, the clerk of the circuit court issued a notice of contemplated dismissal pursuant to Md. Rule 2-507(b) *for lack of jurisdiction* because Ms. Capps had not been served within 120 days of the issuance of the summons. Mr. Powers then filed two relevant motions. The purpose of the first was to allow him “to utilize alternative methods to obtain jurisdiction” over Ms. Capps. The second motion was to defer dismissal of the action in order to permit him to serve her.

Pertinent to the issues presented in this appeal, the motions asserted that Ms. Capps had moved from her last address, that her current whereabouts were unknown to him, and that he was making “earnest” efforts to locate her. He requested that the court permit him to utilize otherwise unspecified alternative methods of service. Mr. Powers pointed out that although dismissal pursuant to Md. Rule 2-507 was technically without prejudice, such a dismissal would effectively bar him from seeking further relief because the statute of limitations had expired on his claims against her.

On March 22, 2021, the court denied these motions because his “attempts to locate [Ms. Capps were] insufficient.” However, on the same day, the court entered an order that deferred dismissal of the action for 60 days.

After entry of the order denying his motion for alternative means of service, Mr. Powers filed several motions requesting additional time to serve Ms. Capps. The circuit court denied all of these and the case was dismissed on June 21, 2021. The court’s order

stated in pertinent part that the case “was DISMISSED without prejudice *for lack of prosecution* pursuant to Md. Rule 2-507(c).” (Italicized emphasis added.)

After the case was dismissed, Mr. Powers filed more motions asking the court to alter or amend the judgment in order to give him additional time to serve Ms. Capps. The court denied all of these as well. On August 18, 2021, he filed a notice of appeal.

Initially, this Court dismissed his appeal. Mr. Powers filed a motion for reconsideration. On July 6, 2022, a panel of this Court granted the motion, reinstated the appeal, and directed that the case be submitted on brief.

#### ANALYSIS

Mr. Powers presents several contentions to us as to why we should reverse the circuit court’s judgment. Among them is that the court erred in refusing to grant a hearing on several of his motions despite his repeated requests for hearings. Although the court was not obligated to hold a hearing under the circumstances of his case, his arguments reveal an error on the circuit court’s part that requires reversal.

Md. Rule 2-507 authorizes courts to dismiss pending cases under two scenarios. Subsection (b) of the rule provides that a case can be dismissed “for lack of jurisdiction” by the court if the plaintiff has not served the defendant with process within 120 days from the date that the process was issued by the clerk’s office to the plaintiff for service.

Subsection (c) authorizes courts to dismiss a case “for lack of prosecution” when there have been no docket entries in the case for a period of one year.<sup>1</sup>

We review a circuit court’s decision to dismiss a case pursuant to Md. Rule 5-507 for abuse of discretion. *Hariri v. Dahne*, 412 Md. 674, 686 (2010). Even though an appellate court’s review of a discretionary decision by the circuit court is deferential, “the [circuit] court’s discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.” *Arrington v. State*, 411 Md. 524, 552 (2009). Accordingly, appellate courts will reverse a discretionary decision by the circuit court if it is based on an error of law. *Bass v. State*, 206 Md. App. 1, 11 (2012).

As we have explained, Md. Rule 2-507(b) authorizes a circuit court to dismiss a case when the court has not obtained jurisdiction over the defendant within 120 days of the date on which the clerk’s office issued a summons for the defendant, which in this case was the day on which Mr. Powers filed his complaint. Mr. Powers failed to serve Ms. Capps within the 120 days. Nor did he serve her within the 60-day extension period provided by the court. So the circuit court had the authority to dismiss the case pursuant to subsection (b).

But the circuit court did not dismiss the case for lack of jurisdiction under subsection (b); it dismissed the case for “lack of prosecution pursuant to Md. Rule 2-507(c).” A case can be dismissed for lack of prosecution only if there have been no docket entries other

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<sup>1</sup> There are exceptions to the dismissal for lack of prosecution part of Rule 2-507 that aren’t applicable to this case.

than those pertaining to the entry or striking of appearances by counsel for one year. The court entered its order of dismissal less than a year after Mr. Powers filed his action and there was no shortage of intervening docket entries. The circuit court erred in dismissing Mr. Powers's action on the basis of lack of prosecution.

We reverse the judgment of the circuit court. On remand, nothing prevents the court from considering whether the case should be dismissed for lack of jurisdiction.

**THE JUDGMENT OF THE CIRCUIT  
COURT FOR QUEEN ANNE'S  
COUNTY IS REVERSED AND THIS  
CASE IS REMANDED FOR FURTHER  
PROCEEDINGS CONSISTENT WITH  
THIS OPINION.**

**APPELLANT TO PAY COSTS.**