

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1064

September Term, 2025

ERROL A. PHILLIPS

v.

MUSHTAQ QURESHI, *et al.*

Graeff,
Berger,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 4, 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.

Errol Phillips, appellant, appeals from an order issued by the Circuit Court for Baltimore City which dismissed his complaint against Kevin Finson and Mushtaq Qureshi, appellees, on the grounds that it was barred by the statute of limitations. He raises six issues on appeal, which reduce to two: (1) whether the court erred in dismissing his complaint, and (2) whether the court erred in denying his request for an Order of Default against Mr. Qureshi.¹ For the reasons that follow, we shall affirm.

Mushtaq Qureshi, by and through his attorney, Kevin Finson, filed a summary ejectment action against appellant in the District Court for Baltimore City, alleging that appellant had failed to pay rent. The court entered a judgment of possession in favor of Mr. Qureshi on February 24, 2020. Appellant filed a motion for a new trial, which was denied. He then appealed the judgment to the Circuit Court for Baltimore City, which following a *de novo* hearing, entered a judgment in favor of appellee on August 10, 2021. Appellant appealed to this Court, which transferred the case to the Supreme Court of Maryland. The Supreme Court denied appellant’s petition for writ of certiorari on April 25, 2025.

Shortly after we transferred appellant’s appeal to the Supreme Court for consideration, appellant filed the instant action raising claims of conspiracy to defraud, defamation, and emotional distress. These claims were based on allegedly false statements

¹ Appellant raises several issues which appear to be related to the denial of a motion to vacate that he filed after the circuit court entered a judgment against him in a separate action for ejectment filed by appellees. Appellant has previously appealed the underlying judgment in that case. And he did not file timely notice of appeal from the denial of his motion to vacate. Consequently, those issues are not properly before us in this appeal.

made by appellee, either to appellant or to the courts, between January 27, 2020, and August 10, 2021. Mr. Finson, who was represented by counsel, filed an answer and motion to dismiss within 30 days of having been served with the summons and complaint. Mr. Qureshi, acting *pro se*, also filed a pleading within 30 days of being served. However, it was not an answer or motion, and only indicated that he intended to respond to appellant’s complaint.

Appellant filed a motion for an order of default against Mr. Qureshi on April 11, 2025. Five days later, Mr. Qureshi, now represented by counsel, filed an answer and motion to dismiss. Contemporaneously, he requested the court not to enter an order of default because: (1) his untimeliness in filing an answer had been due to his trying to retain the services of counsel, and (2) he had a meritorious defense to the complaint. The court subsequently denied the request for an order of default and granted appellees’ motions to dismiss the complaint on the grounds that it was barred by the statute of limitations. This appeal followed.

Appellant first contends that the court erred in dismissing his complaint as being barred by the statute of limitations. We disagree. Appellant’s claims for conspiracy to defraud and infliction of emotional distress fall under the general statute of limitations for civil cases: three years from the date of accrual. *See* Md. Code Ann., Cts. & Jud. Proc. § 5-101. And an action for defamation must be brought within one year from the date it accrues. *See* Md. Code Ann., Cts. & Jud. Proc. § 5-105. In determining when a cause of action accrues, “Maryland courts recognize the discovery rule[.]” which is “applicable generally in all actions[.]” *Est. of Adams v. Cont’l Ins. Co.*, 233 Md. App. 1, 25 (2017)

(cleaned up). Under this rule, a “cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong.” *Poffenberger v. Risser*, 290 Md. 631, 636 (1981).

According to appellant’s complaint, the last allegedly wrongful act committed by appellees occurred in August 2021. But appellant did not file the instant case until January 2025, more than three years later. Moreover, the complaint did not allege a basis for tolling the statute of limitations. Nor is such a basis apparent from the record as appellant would have presumably known about appellees’ conduct at the time it occurred, given that it was related to communications that they made either to him or the court.

Additionally, there is no merit to appellant’s claim that there was no time limit to bring the instant action because it alleged fraud under Rule 3-535(b). To be sure, a motion filed under that rule can be filed at any time. But it is not a separate cause of action and does not toll the statute of limitations. Rather, such a motion allows the court to exercise revisory power over a final judgment. And it must be filed in the case where that judgment was entered. We therefore conclude that all the claims raised in appellant’s complaint were barred by the statute of limitations. Consequently, the court did not err in granting appellees’ motions to dismiss.²

² Appellant briefly claims that the court should have allowed him to subpoena various records, which would have showed that appellees committed fraud. But because appellant’s complaint was dismissed, he did not have the right to obtain discovery from appellees under the Maryland Rules.

Appellant also asserts that the court erred in not entering an order of default against Mr. Qureshi because he did not file an answer or responsive pleading within 30 days after having been served with the summons and complaint. But even if we assume that the court erred in not entering such an order, appellant has not met his burden of showing that the error was sufficiently prejudicial as to require reversal. *See Barksdale v. Wilkowsky*, 419 Md. 649, 660 (2011) (“[T]he burden to show error in civil cases is on the appealing party to show that an error caused prejudice.”). That is because a defendant may file a motion to vacate an order of default within 30 days, which must “state the reasons for the failure to plead and the legal and factual basis for the defense to the claim.” Md. Rule 2-613(d). Importantly, the court must vacate the default if it “finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action and that it is equitable to excuse the failure to plead[.]” Md. Rule 2-613(e).

Had the court entered an order of default, the next step would not have been a judgment, but notice to Mr. Qureshi, and a thirty-day opportunity to file a motion to vacate the entry of default. And it follows, based on the actual progression of events, that Mr. Qureshi would have filed such a motion, and made the arguments he successfully raised in his motion to dismiss, which was filed within 30 days of appellant filing his request for an order of default. In other words, it is clear that appellee would not have conceded the merits, and the circuit court in fact considered and decided the same issues and arguments an order of default would have placed before it.

Faced with the same questions, albeit on an inverted posture, we are comfortable that the circuit court would have vacated an order of default under Rule 2-613(c). In fact,

its refusal to do so would likely have constituted an abuse of discretion under the circumstances. *See Holly Hall Publ'ns, Inc. v. Cnty. Banking & Tr., Co.*, 147 Md. App. 251, 257 & 267 (2002) (holding that the trial court abused its discretion in denying a motion to vacate an order of default, where the defendant demonstrated the “basis for an actual controversy” and counsel’s failure to file the answer came from inadvertence and not a “continuing pattern of neglect”). Consequently, we are persuaded that any error in not entering an order of default did not prejudice appellant, and therefore did not constitute reversible error.

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

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1064s25cn.pdf>