Circuit Court for Prince George's County
Case No. CAL16-40053

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1151

September Term, 2018

ANGELIQUE BEST

v.

GREATER SUBURBAN MARYLAND PROVISIONAL CHAPTER UNINCORPORATED, et al.

Graeff,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 3, 2020

*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.

Angelique Best, appellant, noted an appeal from rulings of the Circuit Court for Prince George's County granting summary judgment in favor of appellees and awarding attorney's fees. Ms. Best presents four questions for our review, which we have rephrased slightly and consolidated into three questions:

1. Did the Court err in allowing Nayoka Irving, Esq. to be named as Counsel for [appellees] [and] [s]hould the Court have allowed Attorney Robert Jenkins to act as Lead or sole Counsel for [appellees] and in the absence of Attorney Nayoka Irving?

2. Did the Court err by ruling in favor of [appellees'] Motion for Summary Judgment?

3. Did the Court err in granting Attorney's costs and fees to the [appellees]?

For the reasons that follow, we shall affirm.

BACKGROUND

In July 2014, Ms. Best became a member of the former organization known as Greater Suburban Maryland Group ("GSM"), a voluntary organization of 51 mothers which, according to its bylaws, was "an independent family group seeking 'subordinate affiliation' with Jack and Jill of America, Incorporated." ("Jack and Jill"). Jack and Jill, according to its mission statement, "is a membership organization of mothers with children ages 2-19, dedicated to nurturing future African American leaders by strengthening children through leadership development, volunteer service, philanthropic giving and civic duty."[1] According to the amended complaint filed by Ms. Best, GSM became a

[1] *See* https://jackandjillinc.org/about-us/ (last viewed January 28, 2020)

"provisional group" of Jack and Jill in May 2015, and a "provisional chapter" of Jack and Jill in July 2016.

In August 2016, Ms. Best's membership in GSM was terminated on grounds that she had violated the GSM Code of Ethics. In October 2016, GSM became an official chapter of Jack and Jill.

On January 24, 2017, plaintiff filed a seven-count amended complaint against thirteen individual members of the executive board of GSM: Alyssa King Turner, Carleena Graham, Saran Martin, Harriet Richmond, Tawanda Maignan, Toni Ross Harris, Cassandra Irby, Lashaun Martin, Tamara Davis-Brown, Cassandra Guichard, Kia Fitzgerald, Pamela Bulgar Bond and Nicoe McCoy (whom we shall refer to collectively as "appellees") and Jack and Jill.[2] On June 16, 2017, the circuit court dismissed Counts 1-2 and 4-7 of the amended complaint as to all parties.

On December 11, 2017, appellees filed a motion for summary judgment on the remaining count, Count III, which was titled "Constructive Fraud/Negligent Misrepresentation as to the GSM Executive Board." The court held a hearing on January 8, 2018, and, ruling from the bench, granted the motion.

[2] A consent motion to dismiss Jack and Jill from this appeal was denied by this Court on May 6, 2019. Jack and Jill did not file a brief.

On January 18, 2018, Ms. Best filed a "Motion to Alter or Amend the Judgment and for New Trial."[3] On February 8, 2018, appellees filed an opposition to the motion to alter or amend the judgment along with a motion for attorney's fees.

On May 21, 2018, the court held a hearing on Ms. Best's motion to alter or amend the judgment and denied the motion. At the same hearing, the court heard oral argument on appellees' motion for attorney's fees. Counsel for appellees noted that an affidavit in support of the motion had not yet been submitted and requested leave of court to do so. The court granted the motion for attorney's fees and costs stating that the amount would "be determined at a later date." At some point thereafter, appellees filed an affidavit and itemization of attorneys' fees which came to a total of $82,222.50.[4]

On June 29, 2018, the court entered orders denying Ms. Best's motion to alter or amend the judgment and granting appellees' motion for attorney's fees. The order granting attorney's fees did not indicate the amount of fees awarded.

Ms. Best filed a notice of appeal to this Court on July 19, 2018. Two months later, on September 19, 2018, the circuit court entered an order making specific findings with respect to appellees' motion for attorney's fees and ordering Ms. Best to pay $82,222.50

[3] The order granting the motion for summary judgment was entered on the docket on January 31, 2018, thirteen days after Ms. Best filed her motion to alter or amend the judgment. Pursuant to Maryland Rule 2-534, "[a] motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket."

[4] The affidavit was signed by counsel for appellees on May 24, 2018, but it is not clear when it was filed with the court.

to appellees' counsel, Robert Jenkins, Esq. No appeal was filed from the September 19, 2018 order.

DISCUSSION

I.

Ms. Best's first two contentions are (1) that the court erred in allowing Nayoka Irving, Esquire, to represent appellees, because, according to Ms. Best, Ms. Irving was involved in terminating Ms. Best's membership in GSM; and (2) that the court erred in allowing Robert Jenkins, Esquire, an out-of-state attorney, to act as lead counsel for appellees in the absence of Ms. Irving, who had moved for Mr. Jenkins to be admitted *pro hac vice*, because the court's order granting Ms. Irving's motion specifically stated that Ms. Irving's presence was not waived.

As appellees point out, Ms. Best did not move to disqualify Ms. Irving or otherwise object to Ms. Irving acting as counsel for appellees in the circuit court, nor did she object to the trial court allowing Mr. Jenkins to act as counsel for appellees in Ms. Irving's absence. Accordingly, Ms. Best's claims of error on the part of the trial court were not preserved for our review. *See* Maryland Rule 8-131(a) ("[o]rdinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]")

II.

Ms. Best next contends that the court erred in granting summary judgment on Count III of her amended complaint. We disagree.

Maryland Rule 2-501 governs the entry of summary judgment and provides, in pertinent part:

> (f) **Entry of judgment.** The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

On an appeal from a grant of summary judgment, we "examine the same information from the record and determine the same issues of law as the trial court." *Boston Scientific Corp. v. Mirowski Family Ventures, LLC*, 227 Md. App. 177, 194 (2016) (citation omitted). "We therefore only look to the evidence submitted in opposition and support of the motion for summary judgment in reviewing the trial court's decision to grant the motion." *Id.* (citation and internal quotation marks omitted). "The question of whether a trial court's grant of summary judgment was proper is a question of law subject to *de novo* review on appeal." *Kennedy Krieger Institute, Inc. v. Partlow*, 460 Md. 607, 632 (2018) (citation omitted).

"Summary judgment is appropriate if the nonmoving party has failed to make a sufficient showing on an essential element of [their] case with respect to which [they have] the burden of proof." *Central Truck Center, Inc. v. Central GMC, Inc.*, 194 Md. App. 375, 386 (2010) (citations and internal quotation marks omitted). With respect to Count III, therefore, summary judgment was appropriate if Ms. Best failed to make a sufficient showing on an essential element of her claims of constructive fraud or negligent misrepresentation.

Constructive fraud is defined as an "[u]nintentional deception or misrepresentation that causes injury to another." *Canaj, Inc. v. Baker & Division Phase III, LLC*, 391 Md. 374, 421 (2006) (quoting Black's Law Dictionary 686 (8th ed. 2004)). "[N]either actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud." *Bontempo v. Lare*, 217 Md. App. 81, 104 (2014) (citing *Scheve v. McPherson*, 44 Md. App. 398, 406 (1979)).

The elements of negligent misrepresentation are that:

> (1) the defendant, owing a duty of care to the plaintiff, negligently asserts a false statement; (2) the defendant intends that his statement will be acted upon by the plaintiff; (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury; (4) the plaintiff, justifiably, takes action in reliance on the statement; and (5) the plaintiff suffers damage proximately caused by the defendant's negligence.

Balfour Beatty Infrastructure, Inc. v. Rummel Klepper & Kahl, LLP, 451 Md. 600, 627 n. 18 (2017) (citation omitted).

Accordingly, one of the essential elements of Ms. Best's claim for constructive fraud or negligent misrepresentation was that appellees made a misrepresentation or false statement. The misrepresentation or false statement alleged in Count III was that appellees "induced Ms. Best to join GSM by agreeing to perform their administrative duties in accordance with the requirements set forth by Jack and Jill." Ms. Best further alleged that appellees were negligent "in not performing [their] administrative duties as agreed upon," and that appellees breached a fiduciary duty owed to her by improperly terminating her membership in GSM under the GSM Bylaws while "ignoring the requirements of the Jack and Jill Bylaws and Policies and Procedures."

In their motion for summary judgment, appellees asserted that summary judgment was appropriate because there was no evidence to support Ms. Best's allegation that appellees represented that they would perform their duties "in accordance with the requirements set forth by Jack and Jill." Appellees pointed out that, when Ms. Best joined GSM in 2014, GSM "had no formal or informal relationship with Jack and Jill . . . which would obligate it in any way to adhere to the requirements of Jack and Jill[,]" and that the documents provided to Ms. Best when she joined GSM, including GSM's bylaws "made no mention of Jack and Jill of America and its requirements." Appellees asserted that Ms. Best was "specifically put on notice that GSM was not obligated to adhere to the bylaws of Jack and Jill[,]" as evidenced by minutes from a February 2016 meeting which indicated that the members in attendance, including Ms. Best, were informed that GSM was not required to adhere to the rules of Jack and Jill until such time that GSM became an official chapter of Jack and Jill, which did not occur until October 2016, three months after Ms. Best's membership in GSM was terminated.[5]

In her written opposition to the motion for summary judgment, Ms. Best asserted that statements made by appellees to "induce" her to join the organization "led her to believe that GSM was in the process of pursuing membership status in Jack and Jill of America[,]" that "the representations led [her] to believe that GSM would perform [their] administrative duties as required by Jack and Jill of America in furtherance of that

[5] The minutes of the meeting were attached as an exhibit to the motion for summary judgment but do not appear in the record extract.

membership[,]" and that she would not have been terminated if appellees had "performed [their] administrative duties in accordance with the requirements set forth in their Bylaws." The opposition cited generally, without specific page references, to exhibits that were apparently attached to the opposition, but the exhibits are not included in the record extract.[6]

At the hearing on the motion for summary judgment, counsel for appellees asserted that Ms. Best had failed to cite any record, any affidavit, or any documents that demonstrated a dispute of material fact. In response, Ms. Best's counsel stated that "there were inducements made" and that "there were some actual things that were said," that could be "construed as fraud," but she did not reference any specific statements or representations that were made to Ms. Best other than a letter stating that GSM's "mission" was to seek membership in Jack and Jill.

The court granted the motion for summary judgment, finding that there was no dispute as to a material fact. We see no error in the circuit court's determination that summary judgment was appropriate here.

[6] Pursuant to Maryland Rule 8-501(a), it is the duty of the appellant to prepare and file a record extract in every civil case in this Court. Pursuant to Rule 8-501(c), "[t]he record extract shall contain all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal[.]" Although the rule does not preclude our consideration of a part of the record that is not included in the record extract, *see* Rule 8-501(c), "[w]e cannot be expected to delve through the record to unearth factual support favorable to [the] appellant." *Rollins v. Capital Plaza Associated, L.P.*, 181 Md. App. 188, 201 (2008) (citation omitted). We decline to do so here.

A material fact, in the context of a motion for summary judgment, "is one that will alter the outcome of the case, depending upon how the fact-finder resolves the dispute." *John B. Parsons Home, LLC v. John B. Parsons Foundation*, 217 Md. App. 39, 53 (2014) (citation omitted). In her brief, Ms. Best contends that the court erred in granting summary judgment because the following "material facts" were in dispute: (1) whether the accusations against her were violations of GSM's bylaws; (2) whether the proper procedure was followed in terminating her membership; and (3) whether appellees committed fraud by "falsely accusing" her and "using a document that is not a governing document of the organization" to terminate her membership. Ms. Best does not, however, point to anything in the record from which a factfinder could have resolved those issues one way or the other. Nor does she not explain how such "facts" were material to her claim of constructive fraud, or how such findings would have altered the outcome of the case. *See Educational Testing Serv. v. Hildebrant*, 399 Md. 128, 139 (2007) (to defeat an otherwise proper motion for summary judgment it is not sufficient for the opponent to proffer "mere general allegations or conclusory assertions which do not show facts in detail and with precision[.]")

Even assuming the existence of a factual dispute as to whether Ms. Best was falsely accused of violating GSM bylaws or was improperly terminated from GSM, such a dispute would not have overcome a motion for summary judgment on her claim of constructive fraud or negligent misrepresentation. The essential element of either cause of action was that appellees made a misrepresentation or false statement to Ms. Best, which she relied on to her detriment. The only misrepresentation or false statement, according to Ms. Best's amended complaint and her opposition to the motion for summary judgment, was that

appellees agreed to "perform their administrative duties in accordance with the requirements set forth by Jack and Jill." Ms. Best has not pointed to anything in the record tending to establish that appellees made such a representation. Accordingly, we agree with the circuit court's determination that there was no dispute of material fact and shall affirm the order granting summary judgment in favor of appellees on Count III.

III.

Ms. Best's final contention is that the court erred in granting attorneys' fees. We are without jurisdiction to review this claim of error because no appeal was noted from the final judgment on appellees' motion for attorney's fees.

Subject to a few limited exceptions that do not apply here, a party may appeal only from "a final judgment entered in a civil or criminal case by a circuit court." Md. Code (1974, 2013 Repl. Vol.), Courts and Judicial Proceedings Article, § 12-301. One of three necessary attributes of a final judgment is that it "must be intended by the court as an unqualified, final disposition of the matter in controversy[.]" *Carver v. RBS Citizens, N.A.*, 462 Md. 626, 633 (2019) (citation omitted). "In order to be an unqualified, final disposition, an order of a circuit court must be 'so final as either to determine *and conclude* the rights involved or to deny the appellant the means of further prosecuting or defending his or her rights and interests in the subject matter of the proceeding.'" *Metro Maintenance Systems South, Inc. v. Milburn*, 442 Md. 289, 299 (2015) (citation omitted). In other words, a ruling is final and "unqualified" where "nothing in the trial court's action suggested any contemplation that a further order be issued or that anything more be done." *Williams v. Work*, 192 Md. App. 438, 457-58 (2010) (citation omitted)

A claim for attorney's fees under Maryland Rule 1-341 is collateral to the action between the parties. *Johnson v. Wright*, 92 Md. App. 179, 182 (1992). Consequently, when a collateral claim for attorney's fees has been asserted, "an appeal will lie from a final judgment on the underlying claim despite the pendency of a decision on the attorney's fees claim." *Id.* (quoting *Larche v. Car Wholesalers, Inc.*, 80 Md. 322, 328 (1989)) (discussing a statutory claim for attorneys fees)).

The June 29, 2018 order, denying Ms. Best's motion to alter or amend the judgment, constituted a final, appealable judgment on the disposition of her claims for constructive fraud, negligent misrepresentation and the other causes of action asserted in her amended complaint. Ms. Best noted a timely appeal from that final judgment and we have addressed the merits of her appellate claims, to the extent that they were preserved.

But, there was no final judgment on appellees' collateral claim for attorney's fees until September 19, 2018, when the court issued the order fixing the amount of attorney's fees to be awarded and directing to whom they should be paid, thereby concluding the rights and responsibilities of the parties. The previous order of June 29, 2018, granting the motion for attorney's fees but not fixing the amount, was not a final order as the court obviously contemplated that a further order would be issued upon the court's receipt and review of the verified statement required by Rule 1-341. Because Ms. Best did not note a

timely appeal from the final judgment on the collateral claim for attorney's fees, we are without jurisdiction to review the court's order granting attorney's fees.[7]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[7] We note that even if a timely appeal had been filed from the court's September 19, 2018 order, Ms. Best's claims of error in awarding attorney's fees appear to lack any merit.