Circuit Court for Cecil County
Case No. C-07-CV-19-000399

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1156

September Term, 2020

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JANICE MASON, et al.

v.

INDIAN ACRES CLUB OF
CHESAPEAKE BAY, INC.

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Kehoe,
Zic,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: January 26, 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.

In this appeal from a civil action in the Circuit Court for Cecil County, Janice Mason and Robert Pilaitis, appellants, contend that the court abused its discretion in denying their request for postponement of a hearing on a motion for summary judgment filed by appellee Indian Acres Club of Chesapeake Bay, Inc. ("IAC"). For the reasons that follow, we shall affirm the judgment of the circuit court.

On August 20, 2019, IAC filed a complaint in which it contended that appellants were illegally residing full-time on, and violated declarations related to, campground lots managed by IAC. IAC requested a declaratory judgment and other relief, and listed P.O. Box 49, Earleville MD 21919, as appellants' mailing address. On September 6, 2019, IAC filed a first amended complaint, in which it corrected the previously erroneous spelling of Mr. Pilaitis's surname. On September 29, 2019, appellants were served with process at 645 Knight Island Road, Earleville MD 21919, which is the location of the lots managed by IAC. On October 7, 2019, appellants filed an answer, in which they listed their address as "31 Gunpowder Road P.O. Box 49," Earleville MD 21919.

The court subsequently scheduled a scheduling conference for November 26, 2019, and sent a notice of the conference to each of the appellants at their post office box. Appellants did not appear at the conference. The court subsequently scheduled a hearing for April 27, 2020, and sent a notice of the hearing to each of the appellants at their post office box. The notices were returned to the court as "not deliverable as addressed" and "unable to forward." The court subsequently rescheduled the hearing for August 12, 2020, and on April 20, 2020, sent a notice of the hearing to each of the appellants at their post office box. The notices were again returned to the court as "not deliverable as addressed"

and "unable to forward." On July 2, 2020, IAC filed a second amended complaint and a motion for summary judgment. In the motion, IAC certified that a copy of the motion had been served upon appellants "via first class mail, postage prepaid," to their post office box.

On August 12, 2020, the parties appeared before the court, and IAC requested summary judgment. In response, Ms. Mason stated that she "did not know anything about court" that day. The court noted that Ms. Mason was "sent a copy of all of the[] documents" at her "last-known address," and that she "knew [she was] a party to this case." Ms. Mason denied the court's assertions, requested a jury trial, and denied that she had filed an answer. Ms. Mason further contended that her "P.O. box for the past couple months has not even been active because [appellants] were sick." When the court told Ms. Mason that "it [was her] obligation to keep the [c]ourt posted . . . . as to [her] address and where [she] can be contacted," Ms. Mason replied: "I didn't know." Ms. Mason stated that "even if [she] was served," she "didn't know [that she] had court" that day, and asked if there was "a way [she] can get a lawyer." The court denied the request on the ground that the notification of the hearing sent to Ms. Mason at the post office box "was never returned by the post office." Mr. Pilaitis then admitted that when the court sent notice of the hearing, appellants had a post office box, but "they were mistakenly sending mail back." Mr. Pilaitis further admitted that appellants have "had the same P.O. box for twenty years." When the court asked appellants whether they had obtained "an affidavit from the post office that they made a mistake," Mr. Pilaitis replied that he would "get one if need be," and Ms. Mason replied that appellants "didn't know." Mr. Pilaitis later stated: "We received no papers about this since last August when we were served and I think I do remember that."

Appellants later stated that the reason they were present at the hearing was "[b]ecause a friend called and said [that appellants had] court on the 12th," and that they "would really appreciate a recess or whatever the term is" in order to have "an attorney present." Interpreting appellants' request to be for a postponement of the hearing, the court denied the request on the grounds "that copies were sent to the last address of record of both parties," and "if in fact somebody knowing that they are a party in litigation changes address, they have an obligation to tell the [c]ourt." The court subsequently granted IAC summary judgment.

Appellants now contend that the court abused its discretion in denying their request for postponement, because the court "was mistaken in its . . . assertion that [a]ppellants had received notice of the hearing . . . and that [the] notice hadn't been returned to the [c]ourt." But, we have stated that "[i]t is the duty of a party, not the court, to ensure that the court has the parties' current and correct mailing address," and a "party has a continuing obligation to furnish the court with her most recent address." *Smith-Myers Corp. v. Sherrill*, 209 Md. App. 494, 506-12 (2013) (internal citation and quotations omitted). Here, appellants admitted that they knew that either their post office box was not "active" or that post office employees "were mistakenly sending mail back." Appellants failed to notify the court, prior to the hearing, that the post office box was no longer active or that post office employees were failing to forward mail to appellants, and hence, appellants failed to meet their obligation to ensure that the court had their current and correct mailing address. Also, Rule 2-311(d) states that a "motion . . . that is based on facts not contained in the record shall be supported by affidavit." Here, appellants moved for a postponement on the

grounds that their post office box was no longer "active" and that post office employees "were mistakenly sending mail back," but these alleged facts were not contained in the record, and appellants failed to support them by affidavit. Finally, appellants were aware of the litigation as early as September 29, 2019, yet failed to retain counsel at any time prior to the court's mailing of the April 20, 2020 notices. The court was not required to excuse appellants' failure, for a period of nearly seven months, to retain counsel, and hence, the court did not abuse its discretion in denying appellants' request for a postponement of the August 12, 2020 hearing.

**JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.**