UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1224

September Term, 2014

R. C.

v.

MAYOR & CITY COUNCIL
OF BALTIMORE CITY, ET AL.

Wright,
Graeff,
Moylan, Charles E. Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: October 21, 2015

On March 24, 2014, appellant, R C, filed a complaint seeking damages in the Circuit Court for Baltimore City, alleging negligence, negligent supervision, malicious prosecution, and defamation against appellees: the Mayor and City Council of Baltimore ("The City"); former Police Commissioner Frederick H. Bealefeld, III; the Baltimore City Police Department ("BPD") and Detectives Edward Jones and Sharrice Smith; the Office of the State's Attorney for Baltimore City ("SAO"); Baltimore City Department of Social Services ("Social Services"); the Baltimore City Public School System ("City Schools"); and individual employees and officials in those entities.

Three defendants filed motions to dismiss.[1] C filed motions to postpone on May 23 and June 5, 2015, requesting more time to respond to the various motions to dismiss. Both of his motions were denied. Following a hearing on June 18, 2014, the circuit court granted the three motions to dismiss submitted by the defendants, dismissing all claims with prejudice, citing various reasons including: not stating a claim that relief could be granted, compliance with the local government torts claim act, statute of limitations, and immunity. On June 27, 2014, C filed a motion to reconsider and a motion requesting leave to file an amended complaint. The court denied both of those motions on July 31, 2014, and C appealed on August 14, 2014.

[1] Detectives Edward Jones and Sharrice Smith filed a motion to dismiss on May 6, 2014, the BPD and former Police Commissioner filed a motion to dismiss on May 20, 2014, and the City filed a motion to dismiss on June 6, 2014, pursuant to Md. Rule 2-322(a)(4) for insufficiency of service of process and Md. Rules 2-322(b)(2) & (b)(5) for failure to state a claim upon which relief can be granted and governmental immunity. The remaining defendants filed dispositive motions.

Questions Presented

We have reworded C[redacted]'s questions for clarity as follows:[2]

1) Did the circuit court abuse its discretion by denying the appellant's motion to postpone the June 18, 2014 hearing?

2) Did the circuit court abuse its discretion by denying appellant's motion for reconsideration?

3) Did the circuit court abuse its discretion by denying appellant's motion for leave to amend?

Facts

On or about April 26, 2010, C[redacted] was notified that the Office of Investigations of the City Schools started an investigation into allegations that he engaged in inappropriate contact with a female student that allegedly occurred while C[redacted] was employed at the Baltimore City College High School.[3] Around May 3, 2010, the student was interviewed, and the BPD referred the matter to Bruce Chase of Social Services. On

[2] In his brief, C[redacted] asked:

1) Whether the trial court erred when it denied appellant's motion to postpone the hearing on June 18, 2014, and to allow more time to retain competent legal representation.

2) Whether the trial court erred when it denied appellant's motion for reconsideration the dismal [sic] of all counts on June 18 and the denial of the motion leave to amend the complaint.

[3] The brief submitted by C[redacted] states that he was employed as the "Dean of Discipline" at Baltimore City College High School while the brief submitted by the Baltimore City government says he was employed as a "paraprofessional." He had worked at the school since 2009.

May 5, 2010, the City Schools notified C[redacted] that his employment was terminated effective immediately.

Around June 23, 2010, Social Services completed their investigation and ruled out sexual abuse. The report from Chase stated that C[redacted] inappropriately touched the student but did not fondle or molest her. The report also stated that Chase made inappropriate comments but did not act on them. The final report was presented around June 29, 2010, and Chase closed the case with Child Protective Services.

Detective Jones received the findings from Social Services but urged the assigned SAO to continue with the case, which resulted in another interview with the student around July 6, 2010. Detectives said the second interview alleged that the student reported that C[redacted] would rub her back and her buttocks. Following this interview, C[redacted] was arrested and charged with second-degree child abuse, second-degree assault, sexual solicitation of a minor, fourth-degree sex offense, and sexual abuse of a minor.

Following C[redacted]'s arrest, and during a third interview with the student, the student recanted her previous statements. Also, following C[redacted]'s arrest, Detectives discovered that the student had a history of making false accusations of abuse in the past and was frequently disciplined by teachers and officials at the school. Attached to the complaint was a chart showing police responses to calls to the student's address. The chart showed two calls, on May 30, 2007, and on July 18, 2008, for "Child Abuse-Physical" that were marked "Unfounded Call," and one call on January 18, 2008, for

"Child Abuse-Physical" for which a report was written. Nothing in the chart provided the identity of the person who made the complaint resulting in the visit by the police or revealed the identity of the alleged victim. The chart did not indicate that Det. Jones or Det. Smith were the responding police officers or otherwise had any knowledge of the chart or the information it contained. Exhibit 13 of the complaint consisted of several reports by teachers of misconduct by the female student, including texting in class, singing in class, and being otherwise disruptive and disrespectful in class. Again, there was no attempt made to connect these reports to Det. Jones and Det. Smith. On April 12, 2012, the day set for trial, all charges were dismissed against C[redacted].

On March 24, 2014, C[redacted] filed a complaint in circuit court. C[redacted] claimed that the appellees "negligently and maliciously failed to bring forth known exculpatory evidence and acted to conceal it." C[redacted] asserts that evidence is relevant because the calls were reports of false claims of abuse. In his claims of negligent supervision, C[redacted] asserted that the City, BPD, and former Police Commissioner Bealefeld failed to properly supervise the detectives, and that the City, BPD, and the former Police Commissioner knew, or should have known, of the exculpatory evidence withheld from C[redacted] by the detectives. The failed supervision resulted in C[redacted] being charged for a crime based on false allegations.

The City, the BPD, former Police Commissioner Bealefeld, Det. Jones, and Det. Smith argued that C[redacted]'s claims of malicious prosecution should be dismissed because they are barred by prosecutorial immunity and because the complaint fails to

allege a *prima facie* case of malicious prosecution. In addition, the motion to dismiss filed by the City asserted that C[redacted] failed to file a timely claim under the Maryland Torts Claim Act ("MTCA").[4]

Additional facts will be included as they become relevant to the discussion below.

Discussion

I. Motion to Postpone

Appellate courts will review a circuit court's denial of a request for a postponement for abuse of discretion. *See Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 244 (2011). The circuit court has the discretion to regulate and control the docket as needed to provide for the orderly disposition of motions. *Wynn v. State*, 388 Md. 423, 429 (2005). The Court of Appeals has consistently affirmed denials of motions when, in the absence of "exceptional situations," the litigants have failed to exercise due diligence in preparing for trial. *Touzeau v. Deffinbaugh*, 394 Md. 654, 675-76 (2006). Discussing "exceptional situations," the *Touzeau* Court stated:

> Our reticence to find an abuse of discretion in the denial of a motion for continuance has not been ameliorated, nor have we found it to be an "exceptional situation," when the denial has had the effect of leaving the moving party without the benefit of counsel. In *Cruis Along Boats, Inc. v. Langley*, 255 Md. 139 (1969), the defendant requested a continuance the day before trial because one of his counsel, Mr. Blatt, was scheduled to be in court in another matter on the trial date. The trial judge refused to grant a continuance and, on appeal, the defendant argued that the denial of his motion constituted a denial of his constitutional right to have effective

[4] The MTCA, which is codified at Md. Code (1984, 2014 Repl. Vol.), State Government Article ("SG"), § 12-101 *et seq.*, states that the injured party must file a notice of a claim (in person or through certified mail) with the local government within 180 days after the injury.

> assistance of counsel because Mr. Blatt was his primary counsel in the matter. *Id.* at 142. We held that there was no abuse of discretion in the trial court's ruling because defendant had at least four days' notice that Mr. Blatt would not be available, and therefore the defendant "should have made other arrangements, perhaps adopting the suggestion of the trial judge that an associates of Mr. Blatt's . . . firm handle the trial." *Id.* at 142-43. *See also Travelers Indem. Co. v. Nationwide Const. Corp.,* 244 Md. 401, 407 (1966) (affirming the trial judge's denial of the defendants' motion for continuance made the morning of the day set for trial on the ground that counsel had a scheduling conflict with another proceeding, and the denial resulted in the defendants' lack of representation at trial); *Clarke Baridon, Inc. v. Union Asbestos & Rubber Co.,* 218 Md. 480, 482-83 (1958) (affirming entry of summary judgment by default against defendant where defendant's attorney requested a continuance *in absentia* on the date set for hearing because of a scheduling conflict with another case).

Id. at 674-75.

C[redacted] alleges that he had "come to an impasse with his current attorney," he needed an additional sixty days to find another attorney, and he had to respond to the multiple motions to dismiss. He stated that he had an appointment to meet with an attorney nine days prior to the scheduled hearing date. C[redacted] did not present an "exceptional situation" for postponement in his motions as he had ample time to secure competent legal counsel prior to his trial date. His arguments were insufficient to provide the circuit court with a reason to postpone. C[redacted] had counsel and chose, on his own, to terminate the representation with the amorphous reason that he and his counsel had "come to an impasse."

II. Motion for Reconsideration

Next, C[redacted] argues that the circuit court erred in denying his motion for reconsideration pursuant to Md. Rule 2-534,[5] after it dismissed his complaint for failure to state a claim for which relief could be granted. Appellate courts review denials of a motion for reconsideration for abuse of discretion. *Wilson-X v. Dept. of Human Resources,* 403 Md. 667, 674-75 (2008). In C[redacted]'s motion, he failed to assert new perspectives or arguments for reconsideration.[6]

"'The proper standard for reviewing a grant of a motion to dismiss is whether the trial court was legally correct.'" *Kroll v. Fisher*, 182 Md. App. 55, 61 (2008) (quoting *Higginbotham v. Pub. Serv. Comm'n of Md.*, 171 Md. App. 254, 264 (2006)). The "'truth of all well-leaded relevant and material facts is assumed, as well as all inferences which can be reasonably drawn from the pleadings.'" *Kearney v. Berger*, 182 Md. App. 186, 190 (2008) (quoting *Odyniec v. Schneider*, 322 Md. 520, 525 (1991)). "Dismissal at the trial court level will only be proper if, after assuming the allegations and permissible

[5] Md. Rule 2-534 states that "[i]n an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment."

[6] "A pleading that sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for relief sought . . . . Relief in the alternative or of several different types may be demanded." Md. Rule 2-305.

inferences flowing therefrom are true, the plaintiff would not be afforded relief." *Id.* (citation omitted).

The facts that are before a court considering the propriety of the granting of a motion to dismiss are those alleged in the complaint and contained in exhibits attached to the complaint. *See* Md. Rule 2-303(d) ("A copy of any written instrument that is an exhibit to a pleading is a part thereof for all purposes."); *Samuels v. Tschechtelin*, 135 Md. App. 483, 521 (2000).

The purpose of a motion for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." *Lazaridis v. Wehmer*, 591 F. 3d 666, 669 (3d Cir. 2010). A motion for reconsideration should only be granted if the party seeking reconsideration shows at least one of the following: (1) an intervening change in the controlling law; (2) the availability of new evidence not available prior; or (3) the need to correct a clear error of law or fact, or to prevent manifest injustice. *N. River Ins. Co. v. CIGNA Reinsurance Co.*, 52 F. 3d 1194, 1218 (3d Cir. 1995).

The City asserts that C[redacted]'s motion to reconsider neither gave a clear statement of the facts nor added to his complaint. The motion to reconsider did not address Count 1 of the complaint, which alleged negligence on behalf of the City and the police-related defendants. We agree with the City that C[redacted] "re-argued" the motions to dismiss, asserting that "the allegations of the complaint support logical inferences sufficient to state a plausible claim for relief." Merely rearguing the original motion is insufficient.

A. Government Immunity

The doctrine of sovereign immunity bars lawsuits against the State and its units dependent on varying factors. Former Police Commissioner Bealefeld and Det. Jones and Det. Smith argue on appeal that they are immune from suit, because they are public officials and government employees. City Schools argue that they too lack the capacity to be sued because the school system is shielded by sovereign immunity in any claim of damages over $100,000.00. Social Services argue that they are immune from the suit by sovereign immunity.

In *Baltimore Police Dep't v. Cherkes*, 140 Md. App. 282, 328 (2001), we stated:

> "In Maryland, public official immunity is recognized both at common law and by statute." "[G]ranting police officers qualified immunity is necessary 'to permit police officers . . . to make the appropriate decisions in an atmosphere of great uncertainty. The theory is that holding police officers liable in hindsight for every injurious consequence would paralyze the functions of law enforcement.'"
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> For common law public official immunity to apply:
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> (1) the actor must be a public official, rather than a mere government employee or agent; (2) the conduct must have occurred while the actor was performing discretionary, as opposed to ministerial, acts; and (3) the actor must have performed the relevant acts within the scope of his official duties. If those three conditions are met, the public official enjoys a qualified immunity in the absence of "malice."

(Internal citations omitted). "A conclusory allegation that a public official acted 'maliciously' without a factual allegation is insufficient to defeat a motion to dismiss on the ground of public official immunity." *Id* at 330 (citation omitted). Public officials

include police officers, detectives, and commissioners. *Smith v. Danielczyk*, 400 Md. 98, 128-29 (2007).

In his complaint, C[redacted] argued that Det. Jones and Det. Smith, when acting within the scope of their employment, "negligently and maliciously failed to bring forth known exculpatory evidence" and acted to conceal such evidence from him. He claimed that the prior false allegations of abuse at the home should have been indicators. C[redacted] stated these elements in his complaint but failed to expand on them in his motion for reconsideration.

Moreover, the complaint did not allege facts to show the actual malice needed to overcome the defense of immunity. The allegations were nothing more than conclusions. There were no facts that connected the prior police calls to the student's home with the allegation of abuse at the school, which were responded to by a different set of police officers. It is necessary to plead facts that demonstrate actual malice with some clarity and precision. *Cherkes,* 140 Md. App. at 330.

Even if these claims were expanded upon in the motion for reconsideration, it is doubtful that the allegations against Det. Jones and Det. Smith which C[redacted] makes could rise to the level of "malicious." "[M]alice is defined as behavior "characterized by evil or wrongful motive, intent to injure, knowing and deliberate wrongdoing, ill-will or fraud." *Higginbotham*, 412 Md. at 146 (citations omitted).

C[redacted] failed to provide an actionable claim of malicious behavior on the part of Det. Jones and Det. Smith in his complaint,[7] and he did not expand on the allegations in his motion for reconsideration.

B. Providing Notice Under the Local Government Torts Claim Act

A claim of this type must comply with the notice requirements of the Local Government Torts Claim Act ("LGTCA"), which requires the aggrieved party to file a claim against a government entity or actors within 180 days of the injury. Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 5-304(b)(1).[8] Absent strict or substantial compliance with the notice requirements, a claim may still be allowed to proceed if the claimant can demonstrate, "upon motion and for good cause shown," why notice was not given. CJP § 5-304(d); *see Mayor & City Council of Baltimore v. Stokes*, 217 Md. App. 471, 488 (2014) ("the party asserting good cause has the burden of proving it"). Good cause exists when the claimant prosecutes his claim "with that degree of diligence that an ordinarily prudent person would have exercised

[7] In his argument for malice, C[redacted] says that the SAO waited until just before the trial date to drop the charges, but this does not demonstrate that the police were acting with any malice while they tried to confirm the allegations of abuse.

[8] The purpose of the LGTCA is to "provide remedy for those injuries caused by local government officers and employees acting without malice and in the scope of their employment" while "ensuring that the financial burden of compensation is carried by the local government ultimately responsible for the public officials' acts." CJP § 5-401 to 5-404.

under the same or similar circumstances." *Rios v. Montgomery Cnty.*, 386 Md. 104, 141 (2005) (citation omitted).

The lawsuit against the City Schools should be made by filing against the Baltimore City Board of School Commissioners and not the school system itself. A Board of Education in Maryland has general sovereign immunity, guaranteed by the Eleventh Amendment, for all claims in the amount more than $100,000.00. U.S. Const. amend. XI; CJP § 5-518(c).[9]

C[redacted]'s alleged injury took place on or about June and July 2010 when the investigations were ongoing, and he was arrested and terminated from his employment for alleged sexual abuse. C[redacted] did not file his complaint until March 24, 2014, well after the 180-day notice requirement of the LGTCA. Because he failed to show any "good cause" for his delay to find adequate legal representation, we believe that the circuit court did not abuse its discretion in denying C[redacted]'s motion to reconsider.

III. Motion for Leave to Amend

A circuit court does not abuse its discretion when it denies a motion for leave to amend a complaint if the complaint is "irreparably flawed." *Premium of Am., LLC v. Sanchez*, 213 Md. App. 91, 121 (2013); *see also RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673-74 (2010) ("Although it is well-established that leave to amend acomplaint should be granted freely to serve the end of justice . . . an amendment should

[9] CJP § 5-518(c) states that a board of education may not raise the defense of sovereign immunity to any claim of $100,000.00 or less.

not be allowed if it would result in prejudice to the opposing party or undue delay, such as where amendment would be futile because the claim is flawed irreparably.").

In *Gaskins v. Marshall Craft Assocs., Inc.*, 110 Md. App. 705, 716 (1996), we stated:

> The scope to which a complaint can be amended is controlled by Maryland Rule 2-341(c), which allows parties to amend complaints to
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> > (1) change the nature of the action or defense, (2) set forth a better statement of facts concerning any matter already raised in pleading, (3) set forth transactions or events that have occurred since the filing of the pleading sought to be amended, (4) correct misnomer of a party, (5) correct misjoinder or nonjoinder of a party . . . , (6) add a party or parties, (7) make any other appropriate change.

C[redacted] states that he can "strengthen his complaint" if the motion to amend is granted in order to "overcome the deficiencies pointed out by the court." However, given the arguments on sovereign immunity and the LGTCA discussed above, there was nothing C[redacted] could have added within the scope of Md. Rule 2-341(c) that would have changed the nature of the claims and changed the outcome of the case.

For all of the foregoing reasons, we affirm the circuit court's judgment.

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