

Circuit Court for Harford County
Case No. C-12-CV-21-000144

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1294

September Term, 2021

DENISE PERRY

v.

SUZANNE OSHINSKY

Nazarian,
Ripken,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 28, 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.

Denise Perry, appellant, filed a complaint for defamation in the Circuit Court for Harford County against Suzanne Oshinsky, appellee. Ms. Oshinsky did not file an answer but filed a motion to dismiss asserting that: (1) Ms. Perry had failed to state a claim upon which relief could be granted with respect to some of the alleged defamatory statements, and (2) that the remaining statements challenged by Ms. Perry were barred by the statute of limitations. Ms. Perry filed an opposition, and a hearing was scheduled for August 5, 2021.

On the morning of that hearing, Ms. Perry filed a “Motion to Withdraw Petition without Prejudice” pursuant to Maryland Rule 2-506 (motion for voluntary dismissal). In that motion, Ms. Perry asserted that her husband had been recently hospitalized and “remain[ed] very sick and in need of attention.” Because she was his primary caregiver, Ms. Perry claimed that she had “not been able to properly prepare to litigate” the motion to dismiss. She therefore requested the court to allow her to voluntarily dismiss her complaint without prejudice.

Ms. Perry did not appear at the hearing on the motion to dismiss. At the hearing, the court acknowledged having received her motion for voluntary dismissal but indicated that it was “concerned” because Ms. Perry had made “very clear in her motion her intention to re-instigate the litigation.” Counsel for Ms. Oshinsky indicated that Ms. Oshinsky would prefer the court to grant her motion to dismiss with prejudice, but acknowledged that “Rule 2-506 does give the plaintiff the right to dismiss before an answer [or] motion for summary judgment is filed.” The court nevertheless proceeded to address the merits of Ms. Oshinsky’s motion to dismiss, granted the motion, and denied Ms. Perry’s motion for

voluntary dismissal. Ms. Perry filed a motion for reconsideration pursuant to Maryland Rule 2-535(a), again asserting that the court should have granted her motion for voluntary dismissal without prejudice. The court denied that motion without a hearing. This appeal followed. On appeal, Ms. Perry asserts that the court erred in denying her motion for voluntary dismissal without prejudice and in granting Ms. Oshinsky’s motion to dismiss with prejudice. For the reasons that follow, we shall reverse the judgment of the circuit court.

Although not discussed by the parties, we must first address what orders are properly before us in this appeal. The court entered its final judgment resolving all claims in the case on August 5, 2021. Ms. Perry did not file a notice of appeal to this Court within 30 days after the entry of that judgment. Instead, she filed a motion for reconsideration pursuant to Md. Rule 2-535(a). When the circuit court entered its order denying that motion, Ms. Perry then filed her notice of appeal within 30 days thereafter.

Subject to only a few exceptions, a notice of appeal must be filed within 30 days after entry of judgment. Md. Rule 8-202(a). Certain timely post-judgment motions, including a motion to alter or amend a judgment filed within 10 days of the entry of judgment under Md. Rule 2-534, will extend the deadline for appealing from the judgment until 30 days after the entry of an order disposing of the post-judgment motion. *See* Md. Rule 8-202(c). By contrast, when a party files a motion to revise a judgment more than 10 days (and fewer than 30 days) after the entry of judgment, the motion does not extend the period for filing a notice of appeal. *See, e.g., Blake v. Blake*, 341 Md. 326, 331 (1996). Because Ms. Perry’s motion for reconsideration was filed more than 10 days, but within

30 days, after the entry of the court’s final judgment dismissing her complaint with prejudice, it did not toll her time to appeal that judgment. Consequently, her notice of appeal was only timely as to the order denying her motion for reconsideration. Thus, we do not consider the merits of the underlying judgment in this appeal. Rather, the only issue that is properly before us is whether the court abused its discretion in denying Ms. Perry’s motion for reconsideration.

Generally speaking, we review the denial of a motion for reconsideration for abuse of discretion. *See Grimberg v. Marth*, 338 Md. 546, 553 (1995). “But, at the same time, courts do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature.” *Morton v. Schlotzhauer*, 449 Md. 217, 231 (2016) (quotation marks and citation omitted).

Maryland Rule 2-506(a) specifically provides that a plaintiff may dismiss his or her complaint without leave of the court “at any time before the adverse party files an answer[.]” Unless specified otherwise in the notice of dismissal, such a voluntary dismissal is without prejudice. Because Ms. Oshinsky had not filed her answer, Ms. Perry had the absolute right to dismiss her complaint regardless of the pending hearing on Ms. Oshinsky’s motion to dismiss or the fact that she might have intended to re-file the complaint in the future. To be sure, she unnecessarily sought leave of the court by filing a motion for voluntary dismissal, likely due to the fact that she was a self-represented litigant. However, there was no legal basis for the court to have denied that motion given that she could have simply dismissed her case without prejudice by filing a notice of dismissal.

Consequently, the court erred in the first instance by denying her motion for voluntary dismissal and in granting Ms. Oshinsky’s motion to dismiss with prejudice.

As previously noted, in this appeal we are reviewing the denial of Ms. Perry’s motion for reconsideration, not the underlying judgment. But given the fact that Rule 2-506(a) unequivocally granted Ms. Perry the right to dismiss her complaint without prejudice, we can discern no reason for the court to have denied her motion to reconsider, even taking into account the considerable discretion that it had when ruling on that motion. Consequently, we hold that the court abused its discretion in denying Ms. Perry’s motion for reconsideration and shall reverse the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR HARFORD COUNTY REVERSED.
CASE REMANDED TO THE TRIAL
COURT TO DISMISS APPELLANT’S
COMPLAINT AGAINST APPELLEE
WITHOUT PREJUDICE. COSTS TO BE
PAID BY APPELLEE.**