

Circuit Court for Montgomery County
Case No. 483149V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1414

September Term, 2021

EDMUND AWAH

v.

PIUS YEBOAH ASSUM, et al.

Wells, C.J.,
Nazarian,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 2, 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 Montgomery County, Edmund Awah, appellant, challenges the court’s granting of a motion by appellee Bertha Ofori-Asae for sanctions and failure to allow him to present exhibits at trial, the court’s failure to hold a “hearing on damages” against appellee Pius Yeboah Assum, and the court’s failure to hold “Default Order/Judgment proceedings” against appellees Eric Nyonor and En P Construction, LLC (“En P”). For the reasons that follow, we shall affirm the judgment of the circuit court with respect to Ms. Ofori-Asae, and with respect to the remaining appellees, remand the case for further proceedings.

On August 13, 2020, Mr. Awah filed a complaint against Ms. Ofori-Asae and Mr. Assum for “breach of lease agreement” and other causes of action. On September 18, 2020, counsel for Ms. Ofori-Asae filed a Certificate Regarding Discovery, in which counsel certified that he had “served on all counsel or pro se parties hereto a copy of Defendant Bertha Ofori-Asae’s First Set of Interrogatories to Plaintiff, and Defendant Bertha Ofori-Asae’s First Request for Production of Documents to Plaintiff.” On October 6, 2020, Mr. Awah filed an amended complaint. On November 13, 2020, Mr. Awah filed a “Second Amended Complaint,” to which he attached, as exhibits, 28 photographs.

On November 16, 2020, Ms. Ofori-Asae filed the motion for sanctions, in which she contended that although Mr. Awah “timely served photos” in response to the request for production of documents, he served “no responses.” Ms. Ofori-Asae requested “an order prohibiting [Mr.] Awah from introducing into evidence any documents requested in her” request. Mr. Awah subsequently filed an opposition to the motion, in which he stated that Ms. Ofori-Asae was “requesting . . . material which had already been provided in the

Second Amended Complaint.” On January 7, 2021, the court ordered Mr. Awah to “file a written response to [the] request for documents which addresses each numbered request and . . . provide all documents requested that exist and are in his possession, custody[,] or control on or before January 19, 2021 at 4:30PM.”

On January 20, 2021, Ms. Ofori-Asae renewed her motion for sanctions, stating: “On January 13, 2021, [Ms. Ofori-Asae’s] counsel received [Mr.] Awah’s written responses to the [request for documents] and a total of three photos attached to these responses. [Mr.] Awah referred in his responses to 27 documents attached to his Second Amended Complaint as well as other documents not attached to his written responses but attached none of these documents to his responses.” On March 17, 2021, the court held a hearing on the motion. Following the hearing, the court issued an order in which it granted the motion, and stated that Mr. Awah was “precluded at trial from testifying about any documents he did not produce with his responses to [the] Request for Production of Documents and from introducing into evidence at trial any documents that he has not produced to [Ms.] Ofori-Asae with his responses to [the] Request . . . other than three photos that he did produce with his responses to [the] Request.”

On March 23, 2021, Mr. Awah filed a “Third Amended Complaint,” in which he added Mr. Nyonotor and En P as defendants. On August 24, 2021, Mr. Awah moved for default judgment against Mr. Assum. On September 20, 2021, the court granted the motion, ordered that an order of default be entered against Mr. Assum, and stated that at trial, the court would determine damages against Mr. Assum. On October 6, 2021, Mr. Awah moved for an order of default against Mr. Nyonotor and En P.

On October 19, 2021, Mr. Awah and Ms. Ofori-Asae appeared for trial by jury. Prior to jury selection, counsel for Ms. Ofori-Asae stated that he had “just received from Mr. Awah a bunch of documents,” and was “concerned that [Mr. Awah was] going to try to introduce them in spite of” the court’s March 17, 2021 order. When the court reminded Mr. Awah that he would only be “permitted to put in . . . three photos and [would not] be able to refer to any documents,” Mr. Awah replied:

I had a problem with that kind of ruling for the simple reason that the documents that [counsel is] talking about were all provided . . . long before he started filing his motion for sanctions. And, as a matter of fact, when he filed his motion for sanctions, I duplicated all the documents and . . . sent it to [counsel] and there was documentary evidence from USPS that he did receive the documents, but he went on to proceed to file a motion for sanctions.

The court allowed Mr. Awah to “put on the record . . . any documentation proving that [counsel] received” the documents. Mr. Awah produced a “return receipt requested” card, but the court stated that the card “doesn’t prove anything, other than [Mr. Awah] sent [counsel] something.” The court ultimately ruled that it would not “revisit” the previous ruling on the motion for sanctions, and “therefore, any documents, other than the three photographs, are not going to be referred to and are not going to be presented.”

Following jury selection, Mr. Awah “move[d] for judgment” without calling any witnesses or offering any evidence. Ms. Ofori-Asae also moved for judgment on the ground that Mr. Awah failed “to establish and prove [the] counts” in his complaint. The court granted Ms. Ofori-Asae’s motion.

Mr. Awah first contends that the court abused its discretion in granting the motion for sanctions and prohibiting him from presenting exhibits at trial. We disagree. Rule 2-422 states, in pertinent part:

(c) Response. The party to whom a request [for production of documents] is directed shall serve a written response within 30 days after service of the request or within 15 days after the date on which that party’s initial pleading or motion is required, whichever is later. The response shall state, with respect to each item or category, that (1) inspection and related activities will be permitted as requested, (2) the request is refused, or (3) the request for production in a particular form is refused. The grounds for each refusal shall be fully stated.

(d) Production. (1) A party who produces documents or electronically stored information for inspection shall (A) produce the documents or information as they are kept in the usual course of business or organize and label them to correspond with the categories in the request

Here, there is no evidence in the record that Mr. Awah submitted to Ms. Ofori-Asae a response stating, with respect to each item or category, that the request, or request for production in a particular form, was refused, or produce the documents as they are kept in the usual course of business or organize and label them to correspond with the categories in the request. Also, Mr. Awah does not cite any authority that states that a request for production of documents may be satisfied by reference to documents attached to a pleading filed prior to the request. Hence, the court did not abuse its discretion in granting the motion for sanctions and prohibiting Mr. Awah from presenting the documents at trial.

Mr. Awah next contends that the court “erred in prematurely closing the case” with respect to appellees Mr. Assum, Mr. Nyonor, and En P, “and blatantly refusing to accept further pleadings from” Mr. Awah. While there is no indication in the record, other than

personal correspondence from Mr. Awah, that the court “closed” his case with respect to these appellees or has refused to accept additional pleadings, there is also no indication that the court has determined damages against Mr. Assum as promised in its September 20, 2021 order, or has disposed of Mr. Awah’s motion for order of default against Mr. Nyonotor and En P. Accordingly, we remand the case for the court to address these matters.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY WITH
RESPECT TO APPELLEE BERTHA
OFORI-ASAE AFFIRMED. CASE
REMANDED FOR FURTHER
PROCEEDINGS WITH RESPECT TO
APPELLEES PIUS YEBOAH ASSUM,
ERIC NYONOTOR, AND EN P
CONSTRUCTION, LLC CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY APPELLANT.**