

Circuit Court for Anne Arundel County
Case No. C02-CV-16-003948

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1415

September Term, 2017

RICKEY NELSON JONES

v.

MARY E. BARBERA

Reed,
Friedman,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: January 24, 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.

This case involves whether an applicant for a gubernatorial judicial appointment may state a claim of racial discrimination pursuant to the Maryland Fair Employment Practices Act, Md. Code Ann., State Gov't 20-606 (a) (hereinafter "Title 20") and Title VII of the Civil Rights Acts, 42 U.S.C. §§ 2000e-2(a), 2000e-2(k) (hereinafter "Title VII"). Rickey Nelson Jones (hereinafter "Appellant") was unsuccessful when he applied to secure an appointment by Governor Lawrence J. Hogan to a vacancy on the Circuit Court for Anne Arundel County. Subsequently, Appellant brought suit against Chief Judge Mary E. Barbera of the Maryland Court of Appeals/Administrative Office of the Courts. Appellant alleged that Chief Judge Barbera discriminated against him in violation of Title VII and Title 20.

Chief Judge Barbera moved to dismiss the complaint or in the alternative summary judgment. Subsequently, Appellant moved for default judgment arguing that Chief Judge Barbera's motion to dismiss was filed thirty-two minutes past the midnight filing deadline and also filed a cross-motion for summary judgment. The circuit court granted Chief Judge Barbera's motion to dismiss finding that the filing of the motion to dismiss resulted in no prejudice against Appellant and denied Appellant's motion for default judgment and cross-motion for summary judgment. It is from this decision Appellant files this timely appeal. In doing so, Appellant brings the following questions for our review, which we have rephrased for clarity:¹

¹ Appellant presents the following questions:

1. Was it prejudicial error for the Judge to ignore the clearly identified Defendant herein.

- I. Did the circuit court err when it dismissed Appellant’s complaint and denied Appellant’s cross-motion for summary judgment?
- II. Did the circuit court err in accepting Chief Barbera’s motion to dismiss as timely?

For the foregoing reasons, we answer in the negative and affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Application Process for Circuit Court Judges

A person who wants to become a judge in Maryland must reside in the county, district, or judicial circuit in which he or she is elected or appointed. Candidates are “selected from those who have been admitted to the practice of law in this State, and who are most distinguished for integrity, wisdom, and sound legal knowledge.” Md. Const. Art. 4, § 2. The Governor may appoint an individual who meets these qualifications to the circuit court of the jurisdiction in which the candidate resides. *Id.* Circuit court judges, after appointment, must stand for election in contested elections. Md. Const. Art. 4, § 3. If a judicial vacancy occurs in circuit court “the Governor shall appoint a person duly qualified

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2. Was it prejudicial error for the Judge to not grant Plaintiff’s Motion for Order of Default per the mandatory wording of Rule 2-613(b) and set a hearing to determine Default Judgment?
 3. Was it prejudicial error for the Judge to not grant Plaintiff’s Motion for Default Judgment (and grant all damages requested) or Summary Judgment (and set a hearing to determine all damages)?
 4. Was it prejudicial error for the Judge to grant Defendant’s late motion to dismiss?

to fill said office.” Md. Const. Art. 4, § 5.

The judicial nominating commissions are responsible for screening each applicant and nominating the best candidates and submitting their names to the Governor.² The members of the Trial Court Nominating Commission, who are responsible for screening circuit court judge applicants, are selected by the Governor and the presidents of the Bar Association in the “political subdivision or subdivisions for which the Commission is responsible.” The Trial Court Commission interviews each candidate and selects three candidates to recommend to the governor. Chief Judge Barbera and the Administrative Office of Courts (“AOC”) are not responsible for appointing members of the commission.

Appellant’s First Judicial Application and Federal Lawsuit

Appellant has been practicing law in the state of Maryland for almost twenty-five years. In 2014, Appellant submitted an application for a judicial vacancy on the Circuit Court for Anne Arundel County. Appellant’s name was not recommended to the Governor. Appellant filed a complaint with the Equal Employment Opportunity Commission (“EEOC”) alleging that the AOC discriminated against him based on his race. Subsequently, Appellant filed a complaint with the United States District Court for the District of Maryland against the AOC alleging race discrimination pursuant to Title 20 and

² “Governor Marvin Mandel created by Executive Order, multiple judicial nominating commissions. Since 1971, each governor has re-issued substantially similar orders authorizing such commissions. In 2015, Executive Order 01. 01.2015.09 applied to the judicial nominating commissions selection process. That Executive Order established an Appellate Judicial Nominating Commission and sixteen Trial Court Nominating Commissions organized within the Executive Department.”

Title VII.³

The AOC moved to have the case dismissed on the following grounds: “(1) Maryland circuit court judges are exempt from the protections of Title VII by virtue of appointment by the Governor on a “policy making level” and election to the bench for a term of 15 years, and (2) the AOC is not the employer of a Maryland circuit court judge and, therefore, not a proper defendant.” The federal district court granted the AOC’s motion to dismiss stating: “the position [Appellant] seeks is not protected by Title VII...” because Title VII does not apply to “[1] any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or [2] any person chosen by such officer to be...an appointee on the policy making level.” The district court held that Title VII does not apply to Maryland circuit court judges. The federal district court also held that Appellant’s Title 20 claim must fail because “like Title VII, [Title 20] exempts from coverage elected officials and appointees on the policy making level.” Appellant appealed his case to the United States Court of Appeals for the Fourth Circuit. The United States Court of Appeals affirmed the federal district court’s decision and on June 19, 2017, the United States Supreme Court denied Appellant’s petition for writ of certiorari.

Appellant’s Second Judicial Application

In 2015, Appellant applied for a second time to be a circuit court judge on the Circuit Court for Anne Arundel County. Appellant was interviewed by the Trial Court Judicial

³ *Jones v. Administrative Office of the Court/Maryland Judiciary*, No. 1:15-CV-3336.

Nominating Commission. During Appellant’s interview, Appellant alleges that he was asked about “his [then-] pending federal racial discrimination lawsuit against [the AOC].” Appellant’s name was not recommended to the Governor for an appointment on the circuit court. On April 13, 2016, Appellant filed a complaint with the EEOC alleging that he was racially discriminated against during his interview. On September 30, 2016, the EEOC dismissed Appellant’s complaint. Subsequently, Appellant filed a complaint in the Circuit Court for Anne Arundel County naming Chief Judge Barbera as a defendant.

Chief Judge Barbera filed a motion to dismiss or in the alternative a motion for summary judgment thirty-two minutes after the midnight deadline. On March 17, 2017, Appellant filed a motion for default judgment and a cross motion for summary judgment stating that Chief Judge Barbera filed her response pleading thirty-two minutes after the midnight deadline. In response, Chief Judge Barbera filed a motion to accept the motion to dismiss *nunc pro tunc* and filed a motion to oppose Appellant’s motion for default judgment.

On May 11, 2017, the circuit court held a hearing on the following motions: 1. Chief Judge Barbera’s motion to dismiss or in the alternative for summary judgment; 2. Chief Judge Barbera’s motion to accept the motion to dismiss as timely; 3. Appellant’s motion for default judgment; and 4. Appellant’s cross-motion for summary judgment. During the hearing, the circuit court granted Chief Judge Barbera’s motion to accept her motion to dismiss as timely and denied Appellant’s motion for default judgment as moot. The circuit court found that the thirty-two minutes late motion to dismiss filing did not prejudice Appellant. Subsequently, Appellant filed a motion to reconsider the circuit court’s rulings.

On September 19, 2017, the circuit court ultimately granted Chief Barbera’s motion to dismiss and denied Appellant’s cross-motion for summary judgment and motion for reconsideration.

DISCUSSION

I. Appellant’s Cross Motion for Summary Judgment

A. Parties’ Contentions

Appellant contends that Chief Judge Barbera is not the sole defendant named in his complaint. Specifically, Appellant argues that there are no punctuation marks between Mary E. Barbera Maryland Court of Appeals/Administrative Office of the Courts which indicates that they are “one and the same.” Appellant maintains that “according to the Maryland Constitution, Article IV, Part II, Section 18(b)(1)... ‘[t]he Chief Judge of the Court of Appeals shall be the administrative head of the judicial system of the State.’” As such, Appellant asserts that Chief Judge Barbera was named as a party “due to her status as the representative of the true Defendant, Court of Appeals/ State of Maryland.” Appellant further argues that Chief Judge Barbera was not sued in her individual capacity because “the caption of the complaint states clearly to ‘Serve On’ the Office of the Attorney General.” Moreover, Appellant argues that his cross-motion for summary judgment should be granted because he is not “suing a person elected to public office... [t]he lawsuit is against the State of Maryland via its judiciary.”

Appellant further argues that the circuit court erred when it held that Title VII and Title 20 did not apply to Appellant’s situation. Appellant maintains that Title VII and Title 20 applies to his situation because “Appellant [1] is not an employee of the State of

Maryland, [2] did not sue a person elected to public office, and [3] did not sue a person chosen by such officer (or others) to be an appointee on the policy making level.” Specifically, Appellant contends that his suit is against the State not an individual as such, the exemption language of both Title VII and Title 20 do not apply to Appellant’s situation. Appellant argues that the facially neutral process of appointing a judge on the Circuit Court of Anne Arundel County has a negative impact on minorities.

Chief Judge Barbera responds that the circuit court properly granted her motion to dismiss and denied Appellant’s cross-motion for summary judgment. Chief Judge Barbera argues that Appellant is not protected by Title VII and Title 20. Specifically, Chief Judge Barbera maintains denial of Appellant’s cross-motion for summary judgment was proper because circuit court judges are “excluded from the coverage of Title VII and Title 20 for two alternative reasons: first, because a judge is appointed initially by the Governor to ‘serve on a policy making level’; and second, because an appointed circuit court judge must stand for election and, if successful, would hold a ‘public elective office’ of the State.” As such, Chief Judge Barbera asserts that the position Appellant sought was an appointment “by the Governor to ‘serve[] on a policymaking level,’ and is not subject to the State’s civil service laws.” Moreover, “courts have consistently recognized the policymaking implications of judicial decision making to hold that judges are exempt” from Title VII and Title 20. Chief Judge Barbera contends that circuit court judges run for election and “therefore, are [also] exempt under the public elective office exemption.”

Additionally, Chief Judge Barbera argues that she is the sole defendant in this case because Appellant “failed to request or ensure that summonses were issued and severed

on” the other defendants. Chief Judge Barbera maintains that a claim under Title VII and Title 20 is only made against an employer or prospective employer and Chief Judge Barbera is not Appellant’s prospective employer because she does not appoint or hire circuit court judges. Moreover, Chief Judge Barbera maintains that the circuit court properly denied Appellant’s cross-motion for summary judgment because the circuit court “properly recognized that it could not intrude on the Governor’s exclusive authority to make judicial appointments and provide the requested relief.”

Lastly, Chief Judge Barbera argues the circuit court should have applied the doctrine of collateral estoppel to preclude Appellant from “relitigation of the exemption issue.” Chief Judge Barbera contends that “the issue resulting in the dismissal of the federal suit was whether Mr. Jones may bring a claim of race discrimination arising out of his non-selection for a judicial appointment under Title VII and Title 20.” As such, Appellant had a fair opportunity to litigate and thus, Appellant is barred from relitigating the same issues before this Court.

B. Standard of Review

Appellate review of an order granting summary judgment is a two-step process. The first is to decide whether there were disputes of material fact before the circuit court. *Koste v. Town of Oxford*, 431 Md. 14, 24-25 (2013). We perform this review *de novo*. *Id.* at 25. Summary judgment is proper where the trial court determines that there are no genuine disputes as to any material fact and that the moving party is entitled a judgment as a matter of law. *See* Md. Rule 2-501. The trial court should not resolve any issue regarding the credibility of witnesses as those matters are left to the trier of fact.

Secondarily, appellate courts focus on whether the trial court’s grant of the motion was legally correct. The parameter for appellate review is determining “whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented and there must be more than a scintilla of evidence in order to proceed to trial...” *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152–53 (2008). Additionally, if the facts are susceptible to more than one inference the court must view the inferences in the light most favorable to the non-moving party. *Id.* An appellate court ordinarily may uphold the grant of summary judgment only on the grounds relied on by the trial court. *See Ashton v. Brown*, 339 Md. 70, 80 (1995).

C. Analysis

1. Appellant’s Complaint and Service of Process

Appellant maintains that Chief Judge Barbera is not the sole defendant named in his complaint. Specifically, Appellant argues that there are no punctuation marks between Mary E. Barbera Maryland Court of Appeals/Administrative Office of the Courts which indicates that they are “one and the same.” Appellant stated in his complaint that the Chief Judge, Court of Appeals, and the AOC were all defendants in this case. Appellant maintains that “according to the Maryland Constitution, Article IV, Part II, Section 18(b)(1)... ‘[t]he Chief Judge of the Court of Appeals shall be the administrative head of the judicial system of the State.’”

Maryland Rule 2-112 prescribes as relevant:

(a) Summons. Upon the filing of the complaint, the clerk shall issue forth with a summons for *each* defendant and shall deliver it, together with a copy of each paper filed and a blank copy of the information report form required

to be provided by Rule 16-302 (b), to the sheriff or other person designated by the plaintiff. Upon request of the plaintiff, more than one summons shall issue for a defendant.

Maryland Rule 2-112 (a) (emphasis added).

Here, Appellant’s complaint caption stated, “Mary E. Barbera Maryland Court of Appeals/Administrative Office of the Courts- Serve on: Michele McDonald, Assistant Attorney General Chief Counsel, Courts-Judicial Affairs Division, Office of the Attorney General, 200 St. Paul Place, 20th Floor, Baltimore, Maryland 21202.” During the hearing on May 11, 2017, Appellant stated “the Defendant, your honor is the State of Maryland.”

Appellant argued:

Because the State acts through its executive, legislative, and judicial branches, the actions of those under the umbrella of the judiciary is [sic] the action of the State. And the person who’s the administrative head of the entire state is Mary E. Barbera, the Chief Judge of the Court of Appeals. So the Defendant is the State of Maryland. The representative and on a duly head of the judicial system in the State of Maryland [sic].

The Assistant Attorney General of Maryland who represented Chief Judge Barbera stated: “the sole summons that was issued in this case was issued to Mary Ellen Barbera and served on me. There was no summons served on either the Court of Appeals or the Administrative Office of the Courts.”

Maryland Rule 2-112(a) makes clear that each defendant in a case must be served. In fact, all three entities Appellant named in his complaint are capable of being sued and served. Nonetheless, Appellant only served Chief Judge Barbera and failed to serve the other potential defendants. Maryland Rule 2-507 provides in part, “[a]n action against any

defendant who has not been served...is subject to dismissal as to that defendant.” As such, the sole defendant in Appellant’s case is Chief Judge Barbera and Appellant’s claims against the other potential defendants were properly dismissed for lack of jurisdiction.

2. Appellant’s Title 20 and Title VII Claims

Appellant argues that on November 9, 2015, during his interview for two judicial vacancies on the Circuit Court for Anne Arundel County he was “questioned about his pending federal racial discrimination lawsuit against the defendant.” Appellant contends that this improper questioning coupled with “the long history of racial exclusion on the court’...[and] the Anne Arundel County Trial Court Nominating Commission recommend[ation] all Caucasian candidates with less qualifications to the Governor” demonstrates that he was discriminated against.

In relevant part, Title 20 provides:

(a) An employer may not:

(1) **fail or refuse to hire**, discharge, or otherwise discriminate against any individual with respect to the individual’s compensation, terms, conditions, or privileges of employment because of:

(i) the individual’s race...

(2) limit, segregate, or classify its employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual’s status as an employee because of:

(i) the individual’s race...

Md. Code Ann. § 20-66(a). The statute further prohibits employment agencies from failing or refusing to “refer for employment any individual on the basis of the individual’s race...”

Md. Code Ann. § 20-66(b). The federal counterpart to Title 20 is outlined in Title VII and further permits an “employee” to sue his “employer.” *See* 42 U.S.C. §§ 2000e-2(a). However, Title VII does not permit suits against “[a]ny person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or [2] any person chosen by such officer to be...an appointee on the policy making level.” 42 U.S.C. § 2000e.

Appellant had previously filed a similar complaint in the United States District Court for the District of Maryland against the AOC, alleging race discrimination pursuant to Title 20 and Title VII. *See supra* footnote 3. The AOC moved to dismiss Appellant’s claims on the grounds that:

(1) Maryland circuit court judges are exempt from the protections of Title VII by virtue of appointment by the Governor on a ‘policy making level’ and election to the bench for a term of 15 years, and (2) the AOC is not the employer of a Maryland circuit court judge and, therefore, not a proper defendant.

On March 16, 2016, the Honorable Catherine C. Blake for the United States District Court for the District of Maryland granted the AOC’s motion to dismiss, reasoning in its Memorandum that:

Even assuming [Appellant] were able to identify the correct defendant, his claim must fail because the position he seeks is not protected by Title VII. The statute permits an “employee” to sue his “employer,” but exempts from coverage “[1] any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or [2] any person chosen by such officer to be ... an appointee on the policy making level.” 42 U.S.C. § 2000e(f). A Circuit Court judge in Maryland initially is appointed by an elected official, the governor, to a position “on the policy making level.” *See Gregory v. Ashcroft*, 501 U.S. 452, 467 (1991) (holding Missouri state judges are appointees on the policy making level); *Birch v. Cuyahoga Cty. Probate Court*, 392 F.3d 151, 161 (6th Cir. 2004); *Burgess v. City of*

Lake City, 2013 WL 4056315 at * 2 (D.S.C. 2013). The exemption does not include employees “subject to the civil service laws of a State government,” 42 U.S.C. § 2000e(f), but Maryland Circuit Court judges are not subject to the State’s civil service laws. Md. Code Ann., State Pers. & Pens. § 6-301(2); *see also Williams v. Anderson*, 753 F. Supp. 1306, 1310–11 (D. Md. 1990).

Accordingly, it is not necessary to discuss the particular facts of the application process, or to compare Jones’s qualifications with those of other candidates. This court does not dispute the importance of diversity on the bench, but Jones is not entitled to the relief he seeks.

(internal footnote omitted).

The substance of Appellant’s claims against Chief Judge Barbera, which gave rise to this present appeal, is similar to the claims he brought before the United States District Court. In the instant case, Appellant contends that his rights under Title VII and Title 20 were violated, however the judicial position that Appellant sought is not protected by Title VII or Title 20. Title VII states, in relevant part:

The term “employee” means an individual employed by an employer, except that the term “employee” shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

42 U.S.C. § 2000e. Appellant applied for a judicial vacancy on the Circuit Court for Anne Arundel County, however, neither circuit court judges or applicants for judicial appointments are not protected under Title VII definition of an employee pursuant to the “public elective office” exclusion. *See* 42 U.S.C. § 2000e; Md. Const. Art. 4, § 3.

According to Maryland Constitution, Article IV § 3, state circuit court judges must run for election and if elected they are considered to hold a “public elective office.” Such applicants are also excluded because, when appointed by the governor, they are considered to work on “policy making level.” The Supreme Court of the United States previously addressed whether judicial appointees are considered appointees on the policy level in *Gregory v. Ashcroft*, 501 U.S. 452 (1991).

In *Gregory*, Missouri state court judges challenged the mandatory retirement provision of the State Constitution. *See Article V, § 26 of the Missouri Constitution* (providing “[a]ll judges other than municipal judges shall retire at the age of seventy years”). The judges argued that the provision discriminated against them based on their age pursuant to the Federal Age Discrimination Employment Act (“ADEA”). *Id.* at 456. However, the ADEA stated, “the term ‘employee’ shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer’s personal staff, or an appointee on the policymaking level.” 29 U.S.C. § 630(f). The Court held that Missouri state judges were not covered by the ADEA because they constitute appointees “on a policymaking level,” and such appointees are excluded from coverage under the ADEA. *Gregory*, 501 U.S. at 466–67. Moreover, other courts have recognized the policymaking implications of judicial decisions, thus excluding judges from coverage under Title VII as appointees on the policymaking level. *See e.g., Birch v. Cuyahoga County Prob. Court*, 392 F.3d 151, 160 (6th Cir. 2004) (reasoning the probate court magistrate was exempt from the provisions of Title VII because the judge made policy).

Hence, given the nature of Maryland’s circuit court judicial appointments and the policymaking responsibilities of circuit court judges, it is clear that state circuit court judges and applicants seeking judicial appointment are excluded from Title VII’s definition of employee. Thus, the judicial vacancy Appellant sought is not covered by Title VII.

We also note that Appellant failed to sue the proper entity. The members of the Trial Court Nominating Commission, who are responsible for screening circuit court judge applicants, are selected by the governor and the presidents of the Bar Associations in the “political subdivision or subdivisions for which the Commission is responsible.” Chief Judge Barbera and the AOC are not responsible for appointing members of the commission and are not involved in the nomination process. Therefore, Chief Judge Barbera was also not Appellant’s prospective employer because she played no part in the nominating process.

Accordingly, the circuit court did not err when it denied Appellant’s cross-motion for summary judgment. Appellant failed to show that he is entitled to judgment as a matter of law because he is not protected by Title VII and Title 20, and he failed to bring suit against the proper defendant.

3. Issue Preclusion

Chief Judge Barbera argues that the circuit court should have applied the doctrine of collateral estoppel to preclude Appellant from relitigating the exemption issue.

To apply collateral estoppel or issue preclusion to issue or fact, proponent must demonstrate that (1) issue or fact is identical to one previously litigated, (2) issue or fact was actually resolved in prior proceeding, (3) issue or fact was critical and necessary to judgment in prior proceeding, (4) judgment in prior proceeding is final and valid, and (5) party to be foreclosed by prior

resolution of issue or fact had full and fair opportunity to litigate issue or fact in prior proceeding.

In Re Microsoft Corp. Antitrust Litigation, 355 F.3d 322, 326 (4th Cir. 2004) (citation omitted).

As we previously noted, the issues and facts before the United States District Court for the District of Maryland and the Fourth Circuit are identical to the issues before this Court. Similar to his current claim against Chief Judge Barbera, Appellant previously filed a complaint against the AOC alleging race discrimination pursuant to Title 20 and Title VII. The issue of whether Appellant was protected under Title 20 and Title VII was resolved in the prior proceeding and the court’s finding was necessary to its dismissal of Appellant’s complaint. In fact, the federal district court dismissed Appellant’s complaint, the fourth circuit affirmed, and the United States Supreme Court denied writ of certiorari, thus, the issues before the federal court were resolved, final, and valid. We hold that the doctrine of collateral estoppel applies and bars Appellant from relitigating the same issues that were presented before the federal district court and the Fourth Circuit.

DISCUSSION

i. Motion to Accept a Late Filing

A. Parties’ Contentions

Appellant maintains that the circuit court erred when it denied his motion for default judgment. Appellant argues that he was “gravely prejudiced” by the circuit court granting Chief Judge Barbera’s motion to accept her motion to dismiss as timely. Specifically, Appellant argues that the rules explicitly state that if a party files a late pleading the

opposing party is entitled to an “order of default.” As such, the circuit court erred when it granted Chief Judge Barbera’s motion to accept her late filing.

Chief Judge Barbera responds that the circuit court did not err when it granted her motion to accept a late filing and denying Appellant’s motion for default judgment as moot. Specifically, Chief Judge Barbera argues that Appellant failed to identify any prejudice arising from the circuit court granting her motion to accept her late filing. Chief Judge Barbera argues that the circuit court granted her “motion to accept the motion to dismiss as timely filed [because] there was no predicate basis upon which a default judgment could be based.” We agree.

B. Standard of Review

There is an abuse of discretion “where no reasonable person would take the view adopted by the [circuit] court,” or which the court acts “without reference to any guiding rules or principles.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997). “An abuse of discretion may also be found where the ruling under consideration is ‘clearly against the logic and effect of facts and inferences before the court,’ or when the ruling is ‘violative of fact and logic.’” *Id.*

C. Analysis

Appellant argues that the circuit court erred when it denied his motion for default judgment and granted Chief Judge Barbera’s motion to accept her motion to dismiss as timely. Appellant contends that he was “gravely prejudiced” by this decision. On May 11, 2017, the circuit court held a hearing on the following motions: 1. Chief Judge Barbera’s motion to dismiss or in the alternative for summary judgment; 2. Chief Judge Barbera’s

motion to accept the motion to dismiss as timely; 3. Appellant’s motion for default judgment; and 4. Appellant’s cross-motion for summary judgment. The circuit court stated the following about Chief Judge Barbera’s motion to accept her motion to dismiss as timely:

The issue of the prejudice – and the ruling on this motion is in no way intended as a ruling or even a commentary on the merits of the case at this stage. I view it as a procedural issue.

The Plaintiff obviously, if the motion to dismiss were to be granted, would be prejudiced. But he would also be prejudiced if the case was lost. It would just be in a different manner. One would be on the basis of law and the other one would be on the basis of the facts that surround this case.

So the bottom line is that the Court does not believe that the plaintiff has been prejudiced in a manner that would require it to refuse to exercise its discretion and declines to do so, which means I am exercising the discretion to grant the defendant’s motion to accept as timely Defendant’s motion to dismiss or, in the alternative, for summary judgment. I’m not granting summary judgment, obviously. And—at this point, if at all. And I am denying the plaintiff’s motion for an order of default for the reasons that I just stated.

We hold that the circuit court did not err when it exercised its discretion to accept Chief Judge Barbera’s motion to accept her motion to dismiss as timely. See *Holly Hall Publications, Inc. v. Cty. Banking & Tr. Co.*, 147 Md. App. 251, 265 (2002) (acknowledging “discretion should be exercised so as to ensure that justice is done”) Here, the circuit court found that Appellant was not prejudiced when Chief Judge Barbera filed her response pleading thirty-two minutes late. Furthermore, Appellant fails to show that court’s ruling was “clearly against the logic and effect of facts and inferences before the court.” Accordingly, we hold that the circuit court did not abuse its discretion when it

granted Chief Judge Barbera's motion to accept the late motion to dismiss as timely.

**JUDGMENTS OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**