

Circuit Court for Washington County
Case No. C-21-CV-25-000337

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1509

September Term, 2025

IN THE MATTER OF JUSTIN HOLDER

Zic,
Tang,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 6, 2026

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis nor may it be cited as persuasive authority

Justin Holder, appellant, appeals from an order issued by the Circuit Court for Washington County quashing a deposition notice and subpoena whereby he sought to perpetuate evidence from the Maryland Department of Health, appellee, pursuant to Maryland Rule 2-404. He presents a single question on appeal: whether the court abused its discretion in quashing the deposition notice and subpoena. For the reasons that follow, we shall affirm.

In July 2025, appellant served appellee with a notice of deposition seeking to perpetuate evidence about a 2024 email that was sent to him from an employee of the Washington County Department of Health (the Department) regarding options for public sewer service on his property. Specifically, the email indicated that the Department “in consultation with other agencies” had determined that public sewer would not be considered available and that if appellant had a septic system in need of repair, he would need to apply for a repair permit. The notice of deposition, which was filed prior to appellant filing a lawsuit, sought to “elicit testimony [] to confirm the names and addresses of the parties to the ‘consultation’” mentioned in the email, as well as what was discussed during that consultation.

In claiming that a pre-suit deposition was necessary, appellant asserted that the information he was seeking “may be discarded, memories lost, person deceased, and the information and evidence may absent this action, be lost forever.” He further stated that he did not know the identity of the parties to the consultation, or their “age, health status, and/or plans to stay in this state of Maryland in the future.” Appellee filed a motion to quash, alleging that appellant had failed to make a particularized showing that the evidence

he sought was at risk of being lost if it was not secured in advance of litigation. After the court granted that motion, appellant filed the instant appeal.

Maryland Rule 2-404 allows a person who may have “an interest in an action that the person expects to be brought” to “perpetuate testimony or other evidence relevant to any claim or defense that may be asserted in the expected action” prior to that action being filed. That Rule, however, is “reserved for that category of situations in which it is necessary to prevent testimony from being lost or destroyed before a party is able to pursue discovery in the ordinary course of an action.” *Allen v. Allen*, 105 Md. App. 359, 375-76 (1995). Therefore “a person proceeding under this rule prior to commencing suit must make a particularized showing that the testimony or evidence sought may become unavailable if it is not secured in advance of the contemplated litigation.” *Id.* at 376. The “grant or a denial of a notice pursuant to Rule 2-404 is within the discretion of the trial court.” *Id.* at 374.

Appellant contends that the court abused its discretion in granting the motion to quash because he “made a showing that the testimony sought to be perpetuated is at risk of being lost[.]” However, in support of the requested deposition, appellant simply indicated that he “anticipated” that the information might be discarded or “lost forever” and that he did not know the age, travel plans, or health status of any witnesses that might be identified during the deposition. But these generalized statements could apply to prospective witnesses and evidence in almost any case. Thus, they fell far short of the “particularized

showing” that Rule 2-404 requires. Consequently, we hold that the circuit court did not abuse its discretion in granting appellee’s motion to quash the notice of deposition.

**JUDGMENT OF THE CIRCUIT
COURT FOR WASHINGTON
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**