Circuit Court for Talbot County
Case No. C-20-CV-20-000115

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1998

September Term, 2021

STEVEN GADOW

v.

JOSEPH J. GAMBLE, *et al.*

Graeff,
Beachley,
Albright,

JJ.

Opinion by Albright, J.

Filed: September 7, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Steven Gadow, Appellant, served as a deputy sheriff with the Talbot County Sheriff's Office (the "Sheriff's Office"). His employment was terminated after the Sheriff's Office received a letter from the Talbot County State's Attorney's Office (the "State's Attorney's Office"), advising that Mr. Gadow would no longer be called as a witness at trial. That decision was based upon a Maryland State Police investigation that allegedly revealed that Mr. Gadow had engaged in a pattern of deception that bore negatively on his character for truthfulness.

Mr. Gadow filed a lawsuit in the Circuit Court for Talbot County, Maryland, and amended his complaint to name the State of Maryland, Talbot County, and Sheriff Joseph Gamble, Appellees, as defendants. Among other things, Mr. Gadow's amended complaint alleged that his termination deprived him of rights under the Maryland Law Enforcement Officers' Bill of Rights ("LEOBR"),[1] violated his federal due process rights

[1] LEOBR provided protections for police officers who were investigated or disciplined by their employers. *See Popkin v. Gindlesperger*, 426 Md. 1, 3-4 (2012). LEOBR was repealed on July 1, 2022, Acts of 2021, ch. 59, and a new subtitle governing police accountability and discipline was enacted to replace it, *see* Md. Code, Pub. Safety § 3-101, *et seq*. Because LEOBR was still law when Mr. Gadow was terminated in 2020, all citations here to the sections of the Public Safety Article will be to the versions that were effective in 2020. *See* Md. Code (2018 Repl. Vol. 2020 Supp.), Pub. Safety § 3-101, *et seq*. ("PS § 3-101 (2020)").

under 42 U.S.C. § 1983, and was wrongful.[2] Appellees then moved for dismissal and summary judgment.

After three hearings, the circuit court issued a written memorandum opinion and order, dismissing the counts at issue here or granting summary judgment on them in favor of Appellees. Mr. Gadow timely appealed, arguing, among other things, that he presented viable claims and that he was improperly prevented from obtaining discovery. As such, he presents five questions for our review, which we have rephrased and consolidated into two:

1. Did the circuit court abuse its discretion in reaching and deciding the issue of summary judgment?
2. Did the circuit court err in granting summary judgment in favor of the Appellees?[3]

[2] Mr. Gadow also alleged that he was deprived of overtime wages in violation of the Fair Labor Standards Act ("FLSA"). The parties have since jointly stipulated to the dismissal with prejudice of the FSLA count, and it is not at issue here.

[3] In his brief, Mr. Gadow presented his questions as follows:

1. Whether plaintiff's complaint adequately alleged that the Sheriff's Office violated LEOBR by terminating him on the basis of his placement on a disclosure list.
2. Whether, under LEOBR, a law enforcement officer must be given a hearing whenever investigation of the officer results in recommendation of dismissal.

For the reasons below, we answer these questions in the negative. As we will explain, Mr. Gadow had ample time to pursue discovery in this case or to explain his failure or inability to do so. Nevertheless, Mr. Gadow continued to rely largely upon the allegations in his amended complaint and was unable to generate a genuine dispute of material fact in opposing the defendants' motions for summary judgment. We will affirm the judgment of the circuit court.

BACKGROUND

I. MARYLAND STATE POLICE INVESTIGATION

This case arose after the Maryland State Police investigated a complaint regarding Mr. Gadow. Over the course of this investigation, several witnesses provided statements to investigating officers, summaries of which statements are in the record here. We recount some of this material by way of background here.

In or around April 2018, police were told that Mr. Gadow and his wife moved into a guest house on the property of Eleanor Gearheart. At the time, Ms. Gearheart was 89 years old and wanted to continue living on her property, rather than move into an assisted

3. Whether plaintiff's complaint adequately alleged a claim under 42 U.S.C. § 1983 ("Section 1983").

4. Whether plaintiff's complaint adequately alleged a claim for wrongful termination.

5. Whether the circuit court erred by denying plaintiff the opportunity to take any discovery to substantiate his claims before granting summary judgment to defendants.

living facility. As part of his employment as a deputy sheriff, Mr. Gadow drove a marked police vehicle, and Ms. Gearheart's family felt more comfortable with Ms. Gearheart remaining at home if a police car was parked outside. As such, Mr. Gadow and his wife were allowed to live in Ms. Gearheart's guest house without paying rent. The Gadows were also not required to pay for any utilities.[4]

About one year later, however, Ms. Gearheart's daughter filed a criminal complaint against Mr. Gadow and his wife with the Maryland State Police, alleging that Mr. Gadow was defrauding Ms. Gearheart. An investigation began, and several individuals were interviewed, including Ms. Gearheart, Ms. Gearheart's daughter, two attorneys who had done work for or concerning Ms. Gearheart, Ms. Gearheart's housekeeper, and Ms. Gearheart's bookkeeper.[5]

As part of that investigation, police heard that Mr. Gadow had asked for and received cash gifts from Ms. Gearheart for a vacation and when he was "short of money[.]" Police also reviewed invoices and receipts that appeared to show that Mr. Gadow had sought inflated reimbursement payments from Ms. Gearheart for items purchased and services rendered, amounting to over $22,000 in total. One witness detailed a specific instance of overcharging, alleging that Mr. Gadow sought (and

[4] The record does not indicate whether Eleanor Gearheart or her family had any prior relationship with the Gadows.

[5] Neither Mr. Gadow nor his wife were interviewed as part of the investigation.

obtained) over $1,000 in payment for removing a fallen branch from Ms. Gearheart's property, even though the branch was only three inches in diameter and three or four feet long. On another occasion, Mr. Gadow presented Ms. Gearheart with a bill for over $1,000 that he claimed was for spraying weeds in Ms. Gearheart's driveway, even though Mr. Gadow had not been asked to do so. Police further heard that, at around the same time, Ms. Gearheart "seemed frightened and unusually upset" and that Ms. Gearheart provided the requested gifts to Mr. Gadow and paid his invoices "to keep the peace."

Eventually, Mr. Gadow was asked to leave Ms. Gearheart's property. Ms. Gearheart and her bookkeeper recounted the same incident to police that involved Mr. Gadow becoming agitated, complaining about his lack of wealth compared to Ms. Gearheart, and accusing Ms. Gearheart of treating him poorly. He also used a racial slur to describe that treatment. Mr. Gadow allegedly told Ms. Gearheart that her family wanted to put her in a nursing home, further upsetting and frightening Ms. Gearheart. After Mr. Gadow was asked to move out, he allegedly assented at first, but then stated that he would not leave for approximately four months and would not perform any more tasks for Ms. Gearheart in the interim. Ultimately, Mr. Gadow did not quit Ms. Gearheart's property until after he was formally served with an eviction notice.

II. STATE'S ATTORNEY'S OFFICE'S LETTER REGARDING MR. GADOW

After its investigation concluded, the Maryland State Police contacted the State's Attorney's Office to discuss a potential criminal prosecution of Mr. Gadow. The State's

Attorney's Office reviewed the materials provided by the Maryland State Police, and a prosecutor advised by letter that charges would not be pursued against Mr. Gadow because "[i]t does not appear that Mr. Gadow's actions constitute provable criminal acts." In that same letter, however, the prosecutor further advised that the State's Attorney's Office would no longer call Mr. Gadow as a trial witness for the State because Mr. Gadow's actions appeared to constitute a "pattern of deception" that was "confirmed by several witnesses":

> [G]iven the pattern of deception confirmed by several witnesses and the obligation the State has to inform the defense in any case of "evidence of prior conduct to show the character of the witness for untruthfulness," our office is of the opinion that it cannot ethically produce Mr. Gadow as a witness for the State henceforth.

III. THE DECISION TO TERMINATE MR. GADOW'S EMPLOYMENT WITH THE SHERIFF'S OFFICE

Although it was aware of the Maryland State Police's pending investigation, the Sherriff's Office did not play a role in the investigation. It also did not participate in the State's Attorney's Office's decision to no longer call Mr. Gadow as a witness. Instead, the Sheriff's Office only began to assess Mr. Gadow's employment after it learned that Mr. Gadow would no longer be called.

One day later, Mr. Gadow's employment was suspended with pay. As such, he was provided with paperwork explaining the terms of his suspension and his review rights under LEOBR. Mr. Gadow then waived his review rights in writing, and his suspension continued until his termination.

On June 22, 2020, Mr. Gadow's employment was terminated by letter from the Sheriff's Office. The letter noted that serving as a witness was an "essential function" of Mr. Gadow's job as a deputy sheriff, and that Mr. Gadow's employment was being terminated "solely" because he could no longer perform that function:

> The Sheriff's Office has been advised that the Office of [the] State's Attorney is not willing to call you as a witness in any of its proceedings. The State's Attorney's decision is based upon concerns regarding your credibility to serve as a witness on behalf of the State. As you know, it is an essential function of a Deputy Sheriff to be able to testify in Court proceedings in Talbot County and in any other jurisdiction throughout the State of Maryland. The State's Attorney's decision therefore leaves you unable to perform a critical, essential job function of this Agency.
>
> We have carefully reviewed the situation. Unfortunately, given the size of this Agency, we simply cannot retain Deputy Sheriffs who cannot testify in Court proceedings. Accordingly, I am notifying you that you are hereby terminated from employment . . . This determination is solely a result of your inability to perform an essential job function.

IV. CIRCUIT COURT PROCEEDINGS

In December 2020, Mr. Gadow filed suit in connection with the termination of his employment, naming Sheriff Gamble and the Sheriff's Office as defendants. Mr. Gadow alleged that the stated reasons for his termination were pretextual, and that he instead was improperly terminated under the requirements of LEOBR. Among other things, Mr. Gadow alleged that his termination came at least in part because of the following: (1) his placement on a "list" of officers who had been alleged to have committed acts bearing upon their credibility, integrity, honesty, or

other characteristics that would constitute exculpatory or impeachment evidence; and (2) the allegations against him concerning his conduct on Ms. Gearheart's property (which allegations he was not afforded an opportunity to disprove).

One month later, in January 2021, Sheriff Gamble and the Sheriff's Office moved to dismiss or for summary judgment, attaching 16 exhibits in support.[6] Mr. Gadow opposed the motion and submitted two additional exhibits.[7] In so doing, Mr. Gadow briefly argued that summary judgment was inappropriate because material facts were in dispute, but he did not comply with Maryland Rule 2-501(b) by identifying any such fact with particularity.[8] He also did not submit a Rule 2-

[6] The exhibits included, among other things, witness interview summaries from the Maryland State Police investigation of Mr. Gadow; the personnel report and termination of employment letter involving Mr. Gadow, explaining that Mr. Gadow was terminated "solely" because of his inability to perform an "essential job function;" the State's Attorney's Office's letter indicating that Mr. Gadow could not be ethically called as a witness in future cases; and documents concerning Mr. Gadow's suspension and his waiver of a LEOBR hearing concerning his suspension.

[7] Both exhibits appear to be policy documents from the Sheriff's Office concerning personnel complaints, administrative investigations, and policies for releasing potentially exculpatory or impeaching information to prosecutors concerning deputy sheriffs.

[8] Maryland Rule 2-501(b) provides as follows:

> A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and

501(d) affidavit to explain why he could not set forth those facts or to seek additional time for discovery.[9] Instead, Mr. Gadow devoted much of his opposition to the motion to dismiss question, arguing that his pleading was sufficient to state a claim.

In February 2021, the circuit court held a hearing on the motion. The defendants focused their arguments primarily on summary judgment, asserting that the undisputed facts established that Mr. Gadow was rendered unable to accomplish an essential function of his job. Ultimately, the circuit court indicated that it would consider the arguments and would issue a written decision.

Mr. Gadow then amended his complaint to add the State and Talbot County as defendants and to remove the Sheriff's Office as a defendant.[10] Additionally,

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> line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

[9] Maryland Rule 2-501(d) provides as follows:

> If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

[10] Sheriff Gamble remained a defendant.

among other things, Mr. Gadow added three counts.[11] Aside from the allegations related to Count V, the core of Mr. Gadow's allegations remained relatively unchanged:[12] Mr. Gadow continued to allege that the stated reason for his termination was pretextual and designed to "evade" otherwise-applicable procedural requirements, including the requirement that he receive a hearing on the issues by a "hearing board[.]"[13] In March 2021, Sheriff Gamble moved to dismiss or strike the amended complaint.

[11] As amended, Mr. Gadow's complaint alleged five counts in total: violation of LEOBR by termination for placement on "a list for his alleged issues with untruthfulness" (Count I); violation of LEOBR by failing to provide notice and a hearing before termination (Count II); violation of federal due process rights pursuant to 42 U.S.C. § 1983 (Count III), wrongful termination (Count IV), and failure to pay overtime wages pursuant to the FLSA (Count V).

[12] Mr. Gadow also did not attach additional exhibits to his amended complaint. Instead, he relied upon and incorporated by reference the exhibits attached to his original complaint.

[13] Under LEOBR as it existed at the time of Mr. Gamble's termination, if an investigation of an officer resulted in "a recommendation of demotion, dismissal, . . . or similar action that is considered punitive," the punished officer was entitled to a hearing by a hearing board. PS § 3-107(a) (2020). A hearing board was defined as a body made up of at least three voting members who, among other requirements, took no part in investigating the officer. PS § 3-107(c) (2020). The hearing board would issue written findings of fact and make a finding of guilty or not guilty, and the hearing board had the power to recommend an appropriate penalty if guilt was found. PS § 3-108(a) & (b) (2020). Although that recommendation was non-binding, the penalty could be increased over the recommendation only if certain requirements were met. *See* PS § 3-108(d) (2020).

The circuit court then held a second hearing in April 2021. At this hearing, Sheriff Gamble argued, among other things, that Mr. Gadow amended his complaint to add new legal theories and defendants in a bid to avoid the circuit court's forthcoming ruling on the summary judgment issue. Mr. Gadow disputed that characterization and emphasized that "summary judgment without any discovery is premature." In support, Mr. Gadow stated multiple times that discovery was needed before the court could rule because, among other things, "the Court does not have a complete record[,]" "we need to hear [testimony] from the sheriff[,]" and "[t]here's been no discovery[,] [s]o we can't just take their word[.]"And more specifically, Mr. Gadow argued that he needed and was "entitled to" discovery on whether his inability to be called as a State's witness meant that he could not "perform an essential function" of his job. At the end of the hearing, the circuit court again stated that it would consider the parties' arguments and issue a decision. In so doing, the circuit court indicated that Sheriff Gamble's earlier motion to dismiss or for summary judgment remained pending.

Following that hearing, Talbot County likewise moved to dismiss or for summary judgment, attaching several exhibits. And a few weeks later, in May 2021, Mr. Gadow issued his first discovery requests in the case. He attached those discovery requests to his opposition to Talbot County's motion. In so doing, Mr. Gadow again argued (among other things) that he was entitled to discovery and so

summary judgment was premature.[14] Mr. Gadow's counsel also executed a short affidavit in opposition to summary judgment that was styled as an "Affidavit pursuant to Maryland Rule 2-501(d)."[15]

Two months later, in July 2021, Mr. Gadow served his first (and only) discovery requests on Sheriff Gamble and the State.[16] The State then filed a two-page motion that was styled simply as a motion to dismiss, but that "adopt[ed] and

[14] Despite the requirements of Maryland Rule 2-401(d)(2), Mr. Gadow did not "file with the court a notice stating (A) the type of discovery material served, (B) the date and manner of service, and (C) the party or person served."

[15] Although Mr. Gadow's counsel's statement was styled as a Rule 2-501(d) affidavit, it simply asserted, without further explanation, that the discovery requests served on Talbot County were "essential to justify Plaintiff's opposition" to the county's motion for dismissal or summary judgment. The affidavit did not explain why the facts essential to justify the opposition could not be set forth, and thus why the motion should be denied so that discovery could continue. The affidavit also did not explain why Mr. Gadow's first discovery requests had only just been served, even though he had amended his complaint to add the county three months earlier and his case had been pending for approximately five months at that time.

[16] Like his earlier discovery requests to Talbot County, these requests included interrogatories and document requests. Mr. Gadow again did not file the required Rule 2-401(d)(2) notice of discovery requests with the circuit court. It also appears that the circuit court was not otherwise made aware of these discovery requests because they were not attached to any other filing or referenced at any of the hearings before the circuit court. Only on appeal did Mr. Gadow supplement the record with copies of these requests.

incorporate[d] all the arguments and defenses asserted" in Sheriff Gamble's motion to dismiss or for summary judgment.[17]

In August 2021, Mr. Gadow acknowledged that the State's motion operated as a "joinder" of Sheriff Gamble's motion to dismiss or for summary judgment. He also submitted additional argument and two new exhibits to the court, explaining that his additional argument and evidence were intended to oppose, in part, Sheriff Gamble's motion to dismiss or for summary judgment.

The next month, in September 2021, the circuit court held a third hearing. This hearing focused primarily on Talbot County's motion to dismiss or for summary judgment.[18] During the hearing, Mr. Gadow admitted that "there's been no discovery yet taken in this case," but he nevertheless maintained that there were genuine disputes of material fact that precluded summary judgment. Rather than focus on specific disputes of fact, Mr. Gadow argued that summary judgment was inappropriate because he had a right to test, through discovery, the materials submitted by the State. As a specific example, Mr. Gadow argued that he needed discovery "to examine the facts and circumstances of how [the State's Attorney's

[17] The State also adopted and incorporated all the arguments and defenses in Sheriff Gamble's March 2021 motion to dismiss or strike the amended complaint.

[18] It appears that the beginning of this hearing is not included in the transcript and thus is not in the record. Neither party, however, argues that this missing portion is relevant to the issues here.

Office's] letter came to be[.]"In response, Talbot County pointed out that the "lack of discovery" referenced by Mr. Gadow "really doesn't point to anything or create any sort of genuine dispute [of] material fact. This . . . alone does not preclude summary judgment."

The circuit court then stated that it would consider the parties' arguments and issue a written decision on all the pending motions.

V. THE CIRCUIT COURT'S RULING

In the three months that followed, Mr. Gadow made no further effort to obtain discovery. Then, in December 2021, the circuit court issued a 15-page memorandum opinion and a three-page order, ruling on all the pending motions: (1) Sheriff Gamble's motion to dismiss or for summary judgment; (2) Sheriff Gamble's motion to dismiss or strike the amended complaint; (3) the State's motion to dismiss (in which it also joined both of Sheriff Gamble's motions); and (4) Talbot County's motion to dismiss or for summary judgment. In so doing, the circuit court indicated that it was treating all of Sheriff Gamble's and the State's motions as motions for summary judgment.

As to the first two counts, both under LEOBR, the circuit court granted summary judgment to Sheriff Gamble and the State and dismissed the counts as to Talbot County. The circuit court reasoned that the ability to testify for the State is an essential job duty for deputy sheriffs. The circuit court further determined that

the amended complaint failed to state a cause of action against Talbot County because Sheriff Gamble (not the county) "has exclusive power over [Mr.] Gadow's continued [] employment and the capacity in which he was employed."

The circuit court also concluded that, on the undisputed facts, Mr. Gadow's termination came because the State Attorney's Office would no longer call Mr. Gadow as a witness, not because of a Talbot County policy or an investigation under PS § 3-104 (2020).[19] The circuit court reasoned that any hearing board provided to Mr. Gadow would have served no function because it would have "no control over" the State's Attorney's Office, it could not "present any recommendation" to "dissuade" the State's Attorney's Office from its position, and it could not make a "factual finding that would change the . . . refusal to call [Mr. Gadow] as a witness." The circuit court also granted summary judgment in

[19] As the statutes existed at the time of Mr. Gadow's termination, Section 3-104 of the Public Safety Article governed an "investigation . . . by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal[.]" PS § 3-104(a) (2020). If such an investigation resulted in "a recommendation of demotion, dismissal, . . . or similar action that is considered punitive," the punished officer was entitled to a hearing by a hearing board. PS § 3-107(a) (2020).

Although there was an investigation of Mr. Gadow by the Maryland State Police, the circuit court concluded that this investigation proceeded under Section 2-102 of the Criminal Procedural Article. That section allows "a police officer" to "conduct investigations . . . [to] enforce the laws of the State[.]" Md. Code (2018 Repl. Vol. 2020 Supp.), Crim. Pro. § 2-102(b). Such an investigation might lead to criminal charges, but it would not have triggered the right to a hearing board under PS § 3-107(a) (2020).

favor of the defendants on Mr. Gadow's alternate theories of a violation of 42 U.S.C. § 1983 and wrongful termination.[20]

STANDARD OF REVIEW

In reviewing the grant of a motion to dismiss, we "determine whether the trial court was legally correct[,]" *Patriot Constr., LLC v. VK Elec. Servs., LLC*, 257 Md. App. 245, 271 (2023), and we review the decision without deference, *see Matter of Jacobson*, 256 Md. App. 369, 392 (2022). In so doing, "we must assume the truth of all relevant and material facts that are well pleaded and all inferences which can be reasonably drawn from those pleadings." *Aleti v. Metro. Baltimore, LLC*, 479 Md. 696, 717 (2022) (quotations omitted). "Nonetheless, bald assertions and conclusory statements by the pleader will not suffice and the court need not accept the truth of pure legal conclusions." *Matter of Jacobson*, 256 Md. App. at 392 (quotations omitted).

Summary judgment is available when "there is no genuine dispute as to any material fact and [a] party is entitled to judgment as a matter of law." Md. Rule 2-501(f). We review a grant of summary judgment *de novo*. *Webb v. Giant of Md., LLC*, 477 Md.

[20] As to Count V, which is not at issue here, the circuit court held that there was "a triable issue" because "there is no evidence one way or another as to [Mr.] Gadow's entitlement to overtime[.]" As such, the circuit court denied summary judgment on that count as to Sheriff Gamble and Talbot County. But it dismissed Count V as to the State because the General Assembly had not consented to suit under the Fair Labor Standards Act. The parties then jointly stipulated to dismiss Count V with prejudice.

121, 347-48 (2021). In so doing, we must "evaluate the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the well-plead facts against the moving party." *Schneider Elec. Bldgs. Critical Sys., Inc. v. W. Sur. Co.*, 454 Md. 698, 705 (2017) (quotations omitted). "Ordinarily an appellate court will review a grant of summary judgment only upon the grounds relied upon by the trial court." *Hamilton v. Kirson*, 439 Md. 501, 523 (2014) (quotations omitted). But, if there is an alternative ground "upon which the circuit court would have had no discretion to deny summary judgment," summary judgment may be affirmed on that alternative ground. *See Ragin v. Porter Hayden Co.*, 133 Md. App. 116, 133-34 (2000).

Separately, "Rule 2-322(c) gives the trial court discretion to convert a motion to dismiss to a motion for summary judgment by considering matters outside the pleading." *Hrehorovich v. Harbor Hosp. Ctr., Inc.*, 93 Md. App. 772, 784-85 (1992). As such, though we review a grant of summary judgment *de novo*, we review a circuit court's decision to convert a motion to dismiss to a motion for summary judgment for an abuse of discretion. *See Heneberry v. Pharoan*, 232 Md. App. 468, 478 (2017). "Abuse of discretion occurs where the trial court's decision is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Jones v. Ward*, 254 Md. App. 126, 137 (2022) (quotations omitted).

DISCUSSION

Although the circuit court granted summary judgment in favor of the defendants,[21] in his briefing on appeal, Mr. Gadow largely focuses his arguments on a different question: whether the allegations in his amended complaint were sufficient to state viable claims. Thus, Mr. Gadow devotes much of his briefing to summarizing and recounting his allegations. Of course, Mr. Gadow also addresses the circuit court's grant of summary judgment, but he does so on relatively narrow grounds. Specifically, he asserts that the court should not have reached and decided the summary judgment question. Instead, he argues the circuit court should have afforded him more time to conduct discovery, asserting that he "did not have the opportunity to take any discovery that would have allowed him to place material facts into dispute."

Because of this failure to take discovery, Mr. Gadow does not point to any particular facts in the record to show that there was a genuine dispute of material fact,

[21] The circuit court also dismissed Counts I and II as to Talbot County, because Sheriff Gamble was not a county employee, and the county took no part in the Maryland State Police investigation. As Talbot County points out, Mr. Gadow did not include argument to support that the circuit court erred in that ruling. As such, we do not take up the issue. *See* Md. Rule 8-504(a)(6), (c). Instead, we will address the issues as to which Mr. Gadow does include argument on appeal: the grant of summary judgment in favor of Sheriff Gamble and the State on Counts I and II, and the grant of summary judgment in favor of all the defendants on Counts III and IV.

and that summary judgment was inappropriate. Nevertheless, we will review the record to determine whether summary judgment was warranted.

I. The Circuit Court Did Not Abuse Its Discretion In Treating Defendants' Various Motions As Motions For Summary Judgment

Mr. Gadow argues that the circuit court abused its discretion by reaching and deciding the issue of summary judgment. He asserts that he had no notice that summary judgment was a possibility as to two of the defendants, the State and Sheriff Gamble, and that summary therefore came as a "surprise[.]"He also contends that the circuit court's decision to consider the summary judgment issue was effectively a denial of his request for discovery.

"As a general principle, where there is no genuine dispute of material fact and a party is entitled to judgment as a matter of law, a trial court is not required to refrain from granting summary judgment to allow development of a more complete factual record." *State v. Rovin*, 472 Md. 317, 351 (2021); *see also A.J. Decoster Co. v. Westinghouse Elec. Corp.*, 333 Md. 245, 262-63 (1994) ("While it is true that the court has the discretion to deny a motion for summary judgment so that a more complete factual record can be developed, it is not reversible error if the court chooses not to do so."); *Clark v. O'Malley*, 169 Md. App. 408, 420-21 (2006) (holding that a grant of summary judgment before the end of discovery was not an abuse of discretion where the opposing party failed to explain, in a Rule 2-501(d) affidavit, why the facts needed to generate a dispute could not be set forth).

As such, a circuit court typically has discretion to consider "matters outside the pleading" in ruling on a motion to dismiss, thereby treating the motion "as one for summary judgment" under Maryland Rule 2-501. *See* Md. Rule 2-322(c). But in so doing, the circuit court must give the parties a "reasonable opportunity to present all material made pertinent" to a motion for summary judgment. Md. Rule 2-322(c); *see also Heneberry*, 232 Md. App. at 478 ("We recognize that converting a motion to dismiss to a motion for summary judgment carries the risk of unfair prejudice to a non-movant by potentially denying that party a reasonable opportunity to present material that may be pertinent to the court's decision[.]") (quotations omitted).

Accordingly, we have held that conversion to a summary judgment motion was not an abuse of discretion where "both parties had the opportunity to fully brief the issues on which the court based its determination and had the opportunity to submit materials pertinent to the court's decision[.]" *Heneberry*, 232 Md. App. at 478. Similarly, where a party opposing a motion presents material outside the complaint in opposition, it is less likely that the opposing party will be prejudiced (or taken by surprise) if the circuit court decides the summary judgment issue. *See Worsham v. Ehrlich*, 181 Md. App. 711, 723 (2008) ("As appellant did present material to the court in the form of the motion and attached exhibits, there is no danger that he was prejudiced by the trial court's treatment of the motion as one for summary judgment.").

Turning to the facts here, we perceive no abuse of discretion. *First*, we do not see how Mr. Gadow could have been surprised by the conversion to summary judgment. Two of the defendants, Sheriff Gamble and Talbot County, expressly moved for summary judgment in the alternative. And although the State styled its motion as a motion to dismiss, that same motion incorporated "all" of Sheriff Gamble's "arguments and defenses" in his summary judgment motion. To be sure, Sheriff Gamble also filed a motion to strike or dismiss the amended complaint, but he did so only *after* he had already moved for summary judgment.

Indeed, Mr. Gadow's own conduct throughout the litigation indicates his understanding that summary judgment was on the table. After the State filed its motion to dismiss, Mr. Gadow noted that the State's motion operated as a "joinder" of Sheriff Gamble's motion for summary judgment. Mr. Gadow also attached several exhibits in opposition to the various motions. Such exhibits would not have been germane in opposing a motion to dismiss, but they could inform a summary judgment analysis. Moreover, Mr. Gadow submitted a Rule 2-501(d) affidavit in response to Talbot County's motion for summary judgment, something that is only required when "opposing a motion for summary judgment[.]" Md. Rule 2-501(d). All of this occurred by May 2021, over six months before the circuit court reached and decided the summary judgment issue.

Second, Mr. Gadow was not deprived of a reasonable opportunity to present material to oppose summary judgment. Although he asserts that the circuit court prevented him from taking discovery (and thus from obtaining the material necessary to generate a factual dispute), it appears that Mr. Gadow was not so prevented. Instead, he served interrogatories and requests for documents on all the defendants: requests to Talbot County were served in May 2021, and requests to the other defendants were served in July 2021. All these requests sought responses within 30 days.

Thus, the problem is not that the circuit court prevented Mr. Gadow from taking discovery; it is that Mr. Gadow failed to pursue discovery without offering any explanation to the circuit court. It appears that Mr. Gadow made no effort to collect responsive materials after his requests were served. For instance, Mr. Gadow never moved to compel on his discovery requests. It also appears that he did not engage in any subsequent negotiations or communications with the defendants about his discovery requests. The record shows that Mr. Gadow simply served his requests, and then took no further action to pursue discovery (or to explain his failure to do so).[22]

[22] To be sure, there may be some ambiguity as to the deadline for responding to interrogatories and requests for production under the Maryland Rules. *See* Md. Rules 2-421(b) & 2-422(d). One interpretation is that responses to interrogatories and requests for production are due on the later of 30 days after service, *or* 15 days after "the date on which . . . [the] initial pleading or motion is required[.]" Here, given the dates of service of the complaint and amended complaint, initial pleadings or motions were required on

Moreover, Mr. Gadow did not even begin to pursue other means of discovery that were available to him. His discovery requests to the defendants were limited to requests for documents and interrogatories. Mr. Gadow did not, for example, attempt to notice

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May 10, 2021 or earlier as to all defendants. *See* Md. Rule 2-321(a). Mr. Gadow's discovery requests were served on May 12, 2021 and July 15, 2021 respectively. Accordingly, the 30-day period after service of the requests was later than the 15-day period after the due dates for initial pleadings or motions. And under this interpretation, responses to the requests were due, respectively, in June 2021 and August 2021.

It is possible that there is a second interpretation, however, that might suggest that the defendants need not have responded to Mr. Gadow's discovery requests until after the circuit court issued its decision on the motions to dismiss. Under this interpretation, because a motion to dismiss automatically extends the deadline for answering a complaint, *see* Md. Rule 2-321(c), it likewise automatically extends the time for answering discovery requests under Rules 2-421 and 2-422. Or, put in the language of the relevant discovery rules, responses are due on the later of the following: 30 days after service, 15 days after the "initial . . . motion is required[,]" *or* 15 days after the "initial pleading . . . is required[.]" Here, the deadlines for the defendants' initial pleadings were automatically extended by the defendants' motions to dismiss. *See* Rule 2-321(c). As such, the defendants would not have been required to respond to discovery requests before the circuit court's decision. Of course, this interpretation would be incongruent with, among other things, Maryland's calculation of case time standards. *See, e.g.*, Maryland Time Standards, Table 1, "Civil General" *available at* https://mdcourts.gov/sites/default/files/import/courtoperations/pdfs/timestandardscircuit.pdf (noting that time standards start at the "Filing Date" of a case, and making no provision to suspend time standards while initial motions to dismiss are pending).

Nevertheless, we need not opine on the preferable interpretation of the relevant discovery deadlines here. Mr. Gadow made no argument in the circuit court, and makes no argument in this appeal, that the defendants were not required to respond to his discovery requests by the 30-day deadlines contained in those requests. *See* Md. Rule 8-131(a). In sum, Mr. Gadow neither attempted to pursue his discovery requests (under the first interpretation), nor argued that summary judgment was inappropriate because responses to his requests were not due (under a possible second interpretation).

Sheriff Gamble's deposition (or any other deposition), even though he represented to the circuit court that "we need to hear from the sheriff[.]"*See* Md. Rules 2-411 & 2-412 (with some caveats not applicable here, conferring the right to take depositions without leave of court after "the earliest day on which any defendant's initial pleading or motion is required[,]" upon 10 days' advance notice).

Third, in opposing summary judgment, Mr. Gadow did not properly alert the court to his pending discovery requests, nor did he explain why "the facts essential to justify [his] opposition cannot be set forth" because he needed more time to conduct discovery. *See* Md. Rule 2-501(d). Specifically, Mr. Gadow never filed the required Md. Rule 2-501(d) affidavit in response to Sheriff Gamble's motion for summary judgment, a motion that the State later joined. And his 2-501(d) affidavit in response to Talbot County's motion for summary judgment included no explanation as to why Mr. Gadow had not obtained any discovery materials, even though his case had been pending for over five months by that time.[23] Mr. Gadow also did not file the required Rule 2-401(d)(2) notices

[23] Mr. Gadow filed this affidavit on the same day that he served discovery requests on Talbot County. He did not supplement the statements in that affidavit in the approximately six months between service of those requests and the circuit court's decision here. Thus, there is no explanation in the record as to why Mr. Gadow was unable to obtain any responsive materials in that time.

to alert the circuit court that he served discovery requests.[24] And at the three hearings before the circuit court, Mr. Gadow never explained why discovery had not been obtained, nor did he specify his attempts to obtain discovery.

Indeed, at the final hearing before the circuit court's decision—approximately nine months after he filed his lawsuit—Mr. Gadow offered no explanation for the lack of discovery. He simply stated that "there's been no discovery yet taken in this case[.]" Given this procedural history, we do not perceive that the circuit court abused its discretion in reaching and deciding the issue of summary judgment.

II. The Circuit Court Did Not Err In Granting Summary Judgment

A. Mr. Gadow identifies no genuine disputes of material fact.

We must now determine whether the circuit court correctly granted summary judgment. *See Worsham v. Ehrlich*, 181 Md. App. at 723-24. To oppose summary judgment, a party must "identify with particularity" each material factual dispute and must "identify and attach the relevant portion of the specific document, discovery response, transcript . . ., or other statement under oath that demonstrates the dispute." Md. Rule 2-501(b). "[M]ere general allegations or conclusory assertions which do not show

[24] Although Mr. Gadow did attach to his opposition to Talbot County's motion his discovery requests to Talbot County, he never attached his other discovery requests to any filing, nor did he mention those requests in any hearing before the circuit court. From our review of the record, it appears that the circuit court was never made aware of any discovery requests to Sheriff Gamble or the State.

facts in detail and with precision will not suffice to overcome a motion for summary judgment." *Educ. Testing Serv. v. Hildebrant*, 399 Md. 128, 139 (2007). Additionally, "[t]he facts offered by a party opposing summary judgment 'must be material and of a substantial nature, not . . . merely suspicions.'" *Gurbani v. Johns Hopkins Health Sys. Corp.*, 237 Md. App. 261, 291 (2018) (quoting *Windesheim v. Larocca*, 443 Md. 312, 330 (2015)) (emphasis omitted). And the facts relied upon must be admissible in evidence. *See, e.g.*, *Hamilton*, 439 Md. at 521 n.11 ("[I]n order to pass muster at a summary judgment proceeding, the opponent must produce evidence that would be admissible at trial.") (quotations omitted); *Gooch v. Md. Mechanical Sys., Inc.*, 81 Md. App. 376, 396 (1990) ("[F]acts proffered in opposition to . . . a motion for summary judgment must be admissible in evidence.").

Of course, a genuine dispute can arise not just from proffered facts, but also from the inferences that may reasonably be drawn from those facts. *See Cador v. Yes Organic Market Hyattsville, Inc.*, 253 Md. App. 628, 635 (2022). Nonetheless, although a party opposing summary judgment is entitled to have inferences drawn in his or her favor, any such inferences must be reasonable and based upon "particular facts"—not, for example, general allegations or hypothetical second guesses about what motivated certain conduct. *See Rite Aid Corp. v. Hagley*, 374 Md. 665, 688-89 (2003) (affirming grant of summary judgment where opposing party relied upon "general allegations" that a report of child abuse was not filed in good faith, without supporting those allegations with any particular

facts showing that the individual who made the report had reason to know that the report was unwarranted).

Here, aside from his failure to pursue discovery, Mr. Gadow primarily points to the allegations in his amended complaint to assert that summary judgment is not appropriate. Allegations, however, are not facts, and they do not influence the summary judgment analysis. Likewise, Mr. Gadow's suspicions as to (among other things) the reasons for his termination do not affect the analysis. This is because Mr. Gadow did not support those suspicions by pointing to any particular facts in the record. Although Mr. Gadow generally asserts that "factual claims are disputed" and that he "could have discovered evidence" showing genuine disputes of material fact, on appeal he identifies no particular facts to show that summary judgment was not warranted.

B. Appellees are entitled to judgment as a matter of law.

Even when the opposing party is unable to generate a material dispute of fact, "the court must still find that the movant is entitled to judgment as a matter of law under Rule 2-501(f)[.]" *Thomas v. Shear*, 247 Md. App. 430, 447 (2020). This is because the non-moving party may defeat summary judgment by "establishing that the law does not support judgment in the moving party's favor[.]" *Id.* (citations omitted). Thus, to determine whether Appellees are entitled to summary judgment, we must address each of the counts at issue in this appeal in the context of the undisputed facts.

Mr. Gadow's first two counts concern his rights and protections under LEOBR. Specifically, Count I alleges that Mr. Gadow was improperly terminated because of his placement on a "list for his alleged issues with untruthfulness[,]" and Count II alleges that Mr. Gadow was entitled to a pre-termination hearing. As LEOBR existed at the time of Mr. Gadow's termination, the statute prohibited punitive action against an officer "based solely on the fact" that the officer was included on a list of "officers who have been found or alleged to have committed acts which bear on credibility, integrity, honesty, or other characteristics that would constitute exculpatory or impeachment evidence." PS § 3-106.1 (2020). LEOBR also required that, if a law enforcement officer was investigated and punitive action was recommended (including termination), the officer must receive a hearing on the issues before such action was taken. PS § 3-107(a)(1) (2020). LEOBR, however, expressly did not "limit the authority" of the head of a law enforcement agency "to regulate the competent and efficient operation and management of [the] agency by any reasonable means including transfer and reassignment" if the "action is not punitive" and is "in the best interests of the internal management of the law enforcement agency." PS § 3-102(c) (2020).

Here, Mr. Gadow did not generate a genuine dispute of fact as to the reason for his termination. Sheriff Gamble's letter states that "given the size of this Agency, we simply cannot retain Deputy Sheriffs who cannot testify in Court proceedings" and Mr. Gadow was terminated "solely" because of his "inability to perform an essential job function."

Mr. Gadow did not generate a dispute as to those stated reasons, and he did not point to any facts suggesting that he was terminated solely because of his placement on any disclosure list of officers, or that his termination was a "punitive" action (rather than a management decision based upon the requirements of Mr. Gadow's role, given the size of the Sheriff's Office). Further, although the Maryland State Police investigated allegations against Mr. Gadow, no member of the Sheriff's Office was involved in that investigation, and the Sheriff's Office did not perform any separate investigation or interrogation of Mr. Gadow that would have triggered his rights under LEOBR.[25] Accordingly, Mr. Gadow

[25] The investigation of Mr. Gadow by the Maryland State Police was a criminal investigation under Section 2-102 of the Criminal Procedural Article, not an investigation that "may lead to disciplinary action, demotion, or dismissal" under PS § 3-104(a) (2020). Only the latter, an investigation under PS § 3-104(a) (2020), would have triggered Mr. Gadow's rights under LEOBR. *See* PS § 3-107(a) (2020).

To be sure, in *Mayor & Comm'rs of Westernport v. Duckworth*, 49 Md. App. 236 (1981), this Court held that a Maryland State Police investigation of an officer employed by a different agency could trigger a hearing requirement under LEOBR. But that case involved facts suggesting that the Maryland State Police investigation was relied upon as a disciplinary investigation by the officer's own agency. In *Duckworth*, the Maryland State Police investigated an officer who accidently shot another person while engaging in "horseplay" while on duty. *Id.* at 237. As a result of the shooting, the officer's agency suspended him without pay on an emergency basis, and the officer's employer specifically noted that the suspension would persist "pending the outcome of the on-going investigation by the Maryland State Police[.]" *Id.* (quotations omitted). Reviewing those facts, we reasoned that "where any disciplinary sanction is contemplated, a hearing is required before that action may be taken." *Id.* at 245. And we further determined that it was "clear that the reason for [the officer's] dismissal was his conduct in connection with the . . . shooting incident." *Id.* at 238. That is, "a disciplinary-type complaint" had been

was not entitled to a hearing under PS § 3-107(a)(1) (2020) before his termination, and the reason for Mr. Gadow's termination was not prohibited by PS § 3-106.1 (2020).

Separately, Count III alleges that Mr. Gadow was deprived of due process rights under 42 U.S.C. § 1983.[26] That statute "permits a plaintiff to recover damages when an individual, acting under the color of state law, transgresses a federally created right of the plaintiff." *Okwa v. Harper*, 360 Md. 161, 192 (2000). To succeed in a Section 1983 action, plaintiffs must show that "(1) they had property or a property interest (2) of which the defendant deprived them (3) without due process of law." *Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach*, 420 F.3d 322, 328 (2005). "Absent some special tenure provision," police officers typically "[do] not have a federally protected [property] right to continued employment as a police officer[.]" *Elliott v. Kupferman*, 58 Md. App. 510,

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effectively lodged against the officer, and an investigation occurred to determine what discipline was warranted. *Id.* at 245 (quotations omitted). As such, the Maryland State Police investigation triggered LEOBR's hearing requirements.

Here, however, Mr. Gadow fails to generate a factual issue as to the reason for his dismissal, and he points to no facts suggesting that his dismissal was punitive, disciplinary, or a reaction to the findings of the Maryland State Police investigation concerning his conduct (or to the alleged underlying conduct itself). Likewise, he points to no facts to generate a dispute that the Maryland State Police investigation (or its findings) was relied upon by the Sheriff's Office to determine appropriate discipline.

[26] 42 U.S.C. § 1983 provides, in pertinent part: "Every person who, under color of any statute, . . . [or] regulation[ ] . . . of any State . . ., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law[.]"

520 (1984). Thus, a plaintiff officer generally cannot rely upon a termination of his employment, without more, to show a due process violation within the meaning of Section 1983. Additionally, "a violation of state law is not tantamount to a violation of a federal right," and courts instead review "the state process as a whole" to determine whether a plaintiff's federal due process rights were violated. *Sunrise Corp. of Myrtle Beach*, 420 F.3d at 328.

Here, Mr. Gadow failed to establish a genuine dispute of fact that he had a property interest in his continued employment or that he was entitled to a pre-termination hearing board under LEOBR. Although Mr. Gadow executed and submitted an affidavit opposing summary judgment, that affidavit (and his other supporting exhibits) was narrow in scope and did not include information concerning, among other things, the terms of his employment relationship, any tenure he might have had, or any facts bearing upon the reasons for his dismissal.[27] On appeal, Mr. Gadow likewise did not point us to any such record facts.[28] Moreover, as it existed at the time of Mr. Gadow's termination, LEOBR expressly did not limit Sheriff Gamble's authority to "regulate . . . competent and efficient operation and management" in the best interest of the Sheriff's Office

[27] Mr. Gadow also argued that his termination affected a property interest in a pension that was obtained through his employment, but again he pointed to no specific facts in the record to generate such a dispute, instead relying upon the allegations in his amended complaint.

[28] We also did not locate any relevant facts in our own review of the record.

through non-punitive employment actions. *See* PS § 3-102(c) (2020). And Mr. Gadow was unable to generate a dispute concerning whether his termination was punitive or whether he was entitled to a hearing. Thus, we agree with the circuit court that, on the undisputed facts, the defendants did not infringe any "federally created" right of Mr. Gadow to continued employment or to the protections of a hearing board before termination. Summary judgment was appropriate on Mr. Gadow's claim of violation of due process under 42 U.S.C. § 1983.[29]

[29] The parties also dispute whether the separate defendants are amenable to suit under Section 1983. We note that the defendant in a Section 1983 action must be a "person[,]" and thus a plaintiff generally cannot bring a Section 1983 action "against a state or a state agency[.]" *See Md. Bd. of Physicians v. Geier*, 241 Md. App. 429, 483-84 (2019). The same applies as to any suit against a State officer in his or her official capacity, because such a suit is considered to be against the State. *See Ritchie v. Donnelly*, 324 Md. 344, 355 (1991).

A local government, however, can be liable under Section 1983 if "the municipality [or county] *itself* causes the constitutional violation at issue. *Respondeat superior* or vicarious liability will not attach under [Section] 1983." *City of Canton, Ohio v. Harris*, 489 U.S. 378, 385 (1989) (emphasis in original). Thus, to be liable under Section 1983 for the effect of one of its policies, a county's "official policy must be the moving force of the constitutional violation[.]" *Polk County. v. Dodson*, 454 U.S. 312, 326 (1981) (quotations omitted). Sheriffs are not county employees under Maryland law, *see Rucker v. Harford County*., 316 Md. 275, 280-81 (1989), but in certain circumstances, and for certain purposes, sheriffs could be considered final policymakers for a county under federal law and Section 1983, *see Santos v. Frederick County. Bd. of Comm'rs*, 346 F. Supp. 3d 785, 794-95 (2018) (noting that a sheriff may be a "final policymaker" for a county "over the 'particular issue' in question").

But regardless of whether the separate defendants are amenable to suit under Section 1983, given our agreement with the circuit court's primary holding that Mr. Gadow's due process rights were not infringed, we need go no further.

Finally, Count IV alleges that Mr. Gadow was wrongfully terminated. The tort of wrongful termination (also referred to as the tort of wrongful discharge) is a "narrow exception" to the rule that "at-will employment may be terminated . . . at any time for any reason." *Holden v. Univ. Sys. of Md.*, 222 Md. App. 360, 366-67 (2015). It requires a showing of three elements: (1) the employee was discharged; (2) the discharge "violated some clear mandate of public policy;" and (3) there is "a nexus between the defendant and the decision to fire the employee." *Id.* at 367. As to the second element, discharge could violate a clear mandate of public policy when, for example, it is "motivated by a desire to conceal wrongdoing[,]" *id.* at 370 (quotations omitted), or when it is motived by discrimination based upon certain characteristics, *see Romeka v. RadAmerica II, LLC*, 254 Md. App. 414, 447-49 (2022), *aff'd*, No. 16, Sept. Term 2022, --- Md. --- (2023) (discussing discrimination based upon sex). But a "private dispute regarding the employer's execution of normal management operating procedures" does not qualify. *See Sears, Roebuck & Co. v. Wholey*, 139 Md. App. 642, 650 (2001) (quotations omitted). Similarly, "poor work performance" and "misconduct in dealing with other employees" are valid grounds for termination that do not violate public policy. *See Romeka*, 254 Md. App. at 458.

Here, the undisputed facts show that Mr. Gadow's termination did not violate a clear mandate of public policy because it was based solely upon Mr. Gadow's inability to perform the requirements of his job. Thus, we need not consider whether there was a

sufficient nexus between each defendant and the decision to terminate Mr. Gadow's employment.

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