

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0279

September Term, 2015

CHARLISSA C. CRENSHAW

v.

HOME DEPOT, *et al.*

Woodward,
Friedman,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: July 20, 2016

*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.

We are asked to determine whether the Circuit Court for Howard County erred when it modified Charlissa Crenshaw’s award from the Maryland Workers’ Compensation Commission (“Commission”). We conclude that the circuit court did not err.

BACKGROUND

In December 2012, Crenshaw filed a claim with the Commission to reopen and modify an earlier Commission award, alleging that her work-related impairment had worsened since the earlier award. Following a hearing, the Commission found that: (1) Crenshaw’s impairment had worsened; and (2) Crenshaw’s impairment was now 50%. Home Depot (Crenshaw’s former employer) and American Home Assurance Company (Home Depot’s insurer) (collectively “Home Depot”) filed a petition for judicial review of the Commission’s decision in the circuit court. Crenshaw, who was represented by counsel before the Commission, proceeded *pro se* before the circuit court.¹

¹ The circuit court explained that Crenshaw had been represented, but, after filing a grievance against her attorneys and not retaining new counsel, was proceeding *pro se* before the circuit court:

THE COURT: Ms. Crenshaw was represented by counsel at the [Commission] proceeding. ... Following the filing of this appeal by the employer of the Commission’s decision, [Crenshaw’s counsel] ... thought it was advisable to bring in co-counsel ... because of the ... issues that were anticipated to be raised by

(Continued...)

Home Depot propounded interrogatories and requests for production of documents on Crenshaw. Crenshaw did not respond.

Home Depot then filed a motion to exclude Crenshaw's medical records and expert medical report on two grounds: (1) they were hearsay; and (2) Crenshaw had failed to respond to Home Depot's discovery requests. The circuit court held a pre-trial hearing at which it granted Home Depot's motion, concluding that: (1) both the medical records and

(...continued)

[Home Depot] regarding the medical issues.

As a result of bringing in [co-counsel], there was the first of the two settlement agreements for some lump sum payment. That was removed from this case by Ms. Crenshaw when she disputed attorney's fees and she apparently ... filed a complaint with the Attorney Grievance Commission

As a result, the Court permitted Counsel to strike their appearance because of the conflict that was created by the filing of the complaint with the Attorney Grievance Commission. ... There was at least one postponement requested in this case by Ms. Crenshaw ... to retain counsel. She has never retained counsel. She's here proceeding *pro se*.

the expert medical report were hearsay and, therefore, for Crenshaw to introduce either at trial, she would need witnesses to authenticate the records; and (2) even if Crenshaw had witnesses, both the medical records and the expert medical report would be excluded because of Crenshaw's failure to respond to Home Depot's discovery requests.

Following the circuit court's ruling, Home Depot and Crenshaw both waived a jury trial and proceeded with a bench trial. Following the trial, the circuit court found: (1) that Crenshaw's impairment had worsened; and (2) that Crenshaw had 26% impairment, not 50% as the Commission had concluded. Crenshaw appealed.

DISCUSSION

Crenshaw argues that the circuit court erred in: (1) overlooking her status as a *pro se* litigant; and (2) excluding her medical records and her expert medical report. Home Depot responds that Crenshaw's *pro se* status did not excuse her failure to follow the Rules and that the circuit court properly excluded the medical records and expert medical report. We conclude that the circuit court did not err.

I. *Pro Se* Litigant

Crenshaw argues that the circuit court should have excused her failure to comply with the Maryland Rules of Evidence and Maryland Rules of Procedure because she was a *pro se* litigant. Crenshaw, however, does not identify the specific Rules that she failed to follow or that the circuit court should have excused. Regardless, we conclude that Crenshaw's status as a *pro se* litigant cannot excuse her failure to follow the Rules.

Under Maryland law, no special treatment is given to a *pro se* party. *Pickett v. Noba, Inc.*, 114 Md. App. 552, 554-55 (1997) (“While we recognize and sympathize with those whose economic means require self-representation, we also need to adhere to procedural rules ... to maintain consistency in the judicial system.”). “The principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident.” *Tretick v. Layman*, 95 Md. App. 62, 68 (1993); *see also Dep’t of Labor v. Woodie*, 128 Md. App. 398, 411 (1999) (“It is a well-established principle of Maryland law that *pro se* parties must adhere to procedural rules in the same manner as those represented by counsel.”).

The circuit court did not err by refusing to provide Crenshaw special treatment because she was a *pro se* litigant. The Rules apply equally to Crenshaw and the circuit court did not err in requiring Crenshaw to follow the Rules.

II. Motion to Exclude Medical Records and Expert Medical Report

Crenshaw argues that the circuit court erred in excluding her medical records and expert medical report. Home Depot responds that the records and expert report were properly excluded as hearsay, pursuant to Maryland Rule 5-802. We agree with Home Depot that the circuit court did not err in excluding Crenshaw’s medical records and expert medical report as hearsay that did not fall within an exception.

The circuit court and Commission follow different evidentiary rules. Commission proceedings are more informal, and therefore, hearsay medical records are admissible:

Proceedings before the Commission are relatively informal to allow the parties to present their positions without undue

expense and delay, and exceptions to the rules of evidence are made in order to promote speed and economy. R.P. Gilbert and R.L. Humphreys, Jr., *Maryland Workers' Compensation Handbook* § 2.2-1 (2d ed.1993). For example, instead of producing live medical testimony at Commission hearings, “medical reports are accepted into evidence as a matter of course despite their inherent hearsay nature.” *Id.*

Kelly v. Baltimore Cnty., 161 Md. App. 128, 149 (2005). In the circuit court, however, the Maryland Rules of Evidence apply and medical reports are inadmissible hearsay, unless they fall within an exception to the hearsay exclusion rule. *Id.* (“[Medical] reports, however, may not be admissible at a *de novo* proceeding conducted at the circuit court level, where the rules of evidence apply, including Rule 5-802”).

Because the parties were before the circuit court, Crenshaw’s medical records and expert medical report were subject to Maryland Rule 5-802, which states that hearsay is inadmissible. Md. Rule 5-802 (“Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible.”). Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Md. Rule 5-801(c). The medical records and expert medical report were hearsay because they were documents containing statements offered to prove Crenshaw’s impairment. Therefore, the records and expert report were inadmissible, unless they fell within a hearsay exception.

One hearsay exception is for records of a regularly conducted business activity. Md. Rule 5-803(b)(6). A business record, although hearsay, is admissible if:

(A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation.

Md. Rule 5-803(b)(6). There are two ways to establish “the necessary evidentiary foundation for admitting business records”: (1) “by extrinsic evidence (usually live witness testimony) regarding the four requirements of Rule 5-803(b)(6)” or (2) by presenting certification that the business record is authentic pursuant to Rule 5-902. *State v. Bryant*, 361 Md. 420, 426 (2000).

The circuit court found that Crenshaw’s medical records and expert medical report were hearsay and that Crenshaw could not establish the necessary evidentiary foundation for admitting the documents under the business records hearsay exception. Crenshaw did not present extrinsic evidence, such as a witness, to authenticate the records or the report, pursuant to Maryland Rule 5-803(b)(6), nor did she have a certification that the records or report were authentic, pursuant to Maryland Rule 5-902. Therefore, the circuit court did not err by excluding Crenshaw’s medical records or expert medical report as hearsay.²

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

² Moreover, even if Crenshaw had brought witnesses to authenticate the medical records and expert medical report, the circuit court would have been well within its authority to preclude those witnesses from testifying as a sanction for Crenshaw’s discovery failures. *See* Md. Rule 2-433.