

Circuit Court for Alleghany County  
Case No. C-01-CV-18-000274

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2195

September Term, 2019

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WAYNE RESPER

v.

WARDEN RICHARD GRAHAM, JR., *et al.*

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Nazarian,  
Shaw Geter,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: November 13, 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.

Wayne Resper, appellant, is an inmate at Western Correctional Institution. Appellees are Richard Graham, Jr., the Warden at Western Correctional Institution; Wexford Medical Sources, Inc., the medical services provider for the Department of Corrections; and Terri Davis, a physician’s assistant for Wexford who treated Mr. Resper. In 2018, Mr. Resper filed a complaint against appellees seeking to force them to provide him with “appropriate medical care.” Specifically, he claimed that Wexford and Davis had denied his requests to refill certain prescriptions and failed to properly treat his chronic medical conditions. He further asserted that Graham had failed to document his encounters with the medical staff and provided him with false information about the availability of certain medical products in the commissary.

All appellees filed motions for summary judgment. Mr. Resper filed motions to extend the time to respond to the motions for summary judgment on April 3 and May 6, 2019. The court granted both motions. In granting the second motion, the court ordered Mr. Resper to file his response no later than June 15, 2019. Mr. Resper did not do so. However, on June 17, 2019 he filed a third motion to extend time to file a response, claiming that he needed additional time because he was waiting on legal paperwork from the U.S. District Court in Greenbelt Maryland. He did not indicate what that paperwork was or why it was necessary to respond to the summary judgment motions.

The court did not rule on that motion. Rather, on July 2, 2019, the court entered an order granting the motions for summary judgment and dismissing Mr. Resper’s complaint with prejudice. Approximately two weeks later, Mr. Resper filed an opposition to the

motion for summary judgment. He then filed a motion for reconsideration on August 2, 2019, claiming that the court should reconsider its grant of summary judgment in light of his opposition. The court denied the motion for reconsideration without a hearing on August 21, 2019. Mr. Resper filed his notice of appeal on September 20, 2019. He raises two issues on appeal, which reduce to one: whether the court abused its discretion in denying his motion for reconsideration. For the reasons that follow, we shall affirm.

As an initial matter, Md. Rule 8-202(a) provides a notice of appeal must be “filed within 30 days of the entry of the judgment or order from which the appeal is taken.” However, a motion invoking the trial court’s revisory power, such as Mr. Resper’s motion to reconsider, will not toll the time for filing an appeal unless the motion is filed within ten days of the judgment or order. *Furda v. State*, 193 Md. App. 371, 377 n. 1 (2010). Thus, “[w]hen a revisory motion is filed beyond the ten-day period, but within thirty days, an appeal noted within thirty days after the court resolves the revisory motion addresses only the issues generated by the revisory motion.” *Id.* Because Mr. Resper filed his motion to reconsider more than ten days after the court entered the underlying order granting summary judgment, the time for filing his appeal from the underlying order was not tolled. As a result, we only review the court’s denial of Mr. Resper’s motion for reconsideration. *See id.*

We review the denial of a motion for reconsideration for abuse of discretion. *Wilson-X v. Dep’t of Human Res.*, 403 Md. 667, 675 (2008). Although abuse of discretion is ordinarily a highly deferential standard of review, the required degree of deference is even greater when the appeal challenges a discretionary decision not to revise a judgment.

In that context, “even a poor call is not necessarily a clear abuse of discretion.” *Stuples v. Baltimore City Police Dep’t*, 119 Md. App. 221, 232 (1998). Moreover, “the ruling in issue does not have to have been right to survive so minimal and deferential a standard of review.” *Id.* That is because “an appeal from the primary judgment itself is the proper method for testing in an appellate court the correctness of such a legal ruling.” *Hardy v. Metts*, 282 Md. 1, 6 (1978). “At most, the very parochial inquiry we shall undertake is into whether [the circuit court’s] denial of the Motion to Revise was so far wrong – to wit, so egregiously wrong – as to constitute a clear abuse of discretion.” *Stuples*, 119 Md. App. at 232.

In claiming that the court abused its discretion in denying his motion for reconsideration, Mr. Resper asserts that the court should have ruled on his third motion for extension of time and, having failed do so, considered his opposition to the summary judgment motions. We disagree. As an initial matter, Mr. Resper was not entitled to an extension of time to file an opposition as a matter of course. Rather, the decision to grant an extension of time in the first instance was entirely within the court’s discretion. Here, Mr. Resper’s third motion for extension of time was filed two days after the date which the court had ordered him to file his opposition to the summary judgment motion. And he did not indicate why he waited until that time to request an extension. Moreover, in that motion, Mr. Resper did not identify any specific reason why another extension of time should be granted, other than noting that he was awaiting receipt of some unspecified documents from the United States District Court. Under those circumstances, we cannot

say that the circuit court’s decision to not grant Mr. Resper additional time to file a response constituted a clear abuse of discretion.

Having not been granted an extension of time, Mr. Resper was required to file his opposition by June 15, 2019. Because he did not do so, the court properly ruled on appellees’ summary judgment motions. Moreover, Mr. Resper has not demonstrated on appeal why the court would have reached a different result had it considered his opposition. In fact, Mr. Resper does not address the merits of the summary judgment motions at any point in his brief, other than to generally assert that it was wrongly decided. Consequently, the court did not abuse its discretion in refusing to reconsider its decision in light of Mr. Resper’s late-filed opposition.

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