Circuit Court for Howard County
Case No: 13-C-17-111750

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2856

September Term, 2018

CARLOS SMITH

v.

SERENE BERYL WEBBER

Berger,
Friedman,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 4, 2020

Carlos Smith appeals from an order of the Circuit Court for Howard County denying his motion to admit counsel *pro hac vice* and the court's order dismissing his complaint with prejudice. For the reasons to be discussed, we shall affirm.

BACKGROUND

On June 8, 2017, Carlos Smith, through his attorney Cyril Smith, filed a complaint in the Circuit Court for Howard County naming Serene Beryl Webber, appellee, as the defendant. (Hereafter, we shall refer to Carlos Smith as "Mr. Smith" and Cyril Smith, Mr. Smith's brother, as "Attorney Smith.") The complaint arose out of an automobile accident in Howard County and alleged that Ms. Webber's vehicle had struck Mr. Smith's vehicle from the rear while he was stopped at a traffic light. Mr. Smith sought $17,770.98 in "actual losses"; $26,656.47 for pain and suffering; and $9,000.00 for lost wages.

Attorney Smith, licensed to practice law in Maryland, apparently resided in Georgia when the lawsuit was filed. On February 1, 2018, Attorney Smith filed a *pro hac vice* motion seeking the special admission of Benjamin Cox, a Pennsylvania attorney, as co-counsel in this case and requesting that his (Attorney Smith's) presence be waived. The motion was deemed "deficient" and it was noted that it would not be considered "a valid pleading or paper" unless the deficiency was corrected. It appears that the deficiency was not corrected and on March 2, 2018, the administrative judge denied the motion. About three weeks later, Maryland attorney Tilman Dunbar entered his appearance as counsel for Mr. Smith. Attorney Smith, however, did not withdraw his appearance.

Trial was set for May 18, 2018. Two days before the scheduled trial date, Counselor Dunbar filed a "consent motion to continue," which was granted. Trial was rescheduled to

October 1, 2018 and on that date, defense counsel appeared in court for trial, but with his consent, a postponement was granted, apparently due to a family emergency which required plaintiff's counsel's (Mr. Dunbar's) presence out-of-state. Trial was then reset for November 5, 2018.

On October 4, 2018, Counselor Dunbar moved to withdraw his appearance from the case, citing "irreconcilable differences" with his client; the motion included Mr. Smith's written consent to the withdrawal. It appears that the motion was determined to be "deficient," but the deficiency was later corrected, and the motion was granted on October 30, 2018.

The next day, October 31st, Attorney Smith filed a new motion seeking, again, the special admission of Pennsylvania attorney Benjamin Cox as co-counsel with him in this case. His motion included a request to waive his (Attorney Smith's) presence. This pleading too was deemed "deficient" and the motion had not been ruled on when the case was called for trial by jury on Monday, November 5, 2018.[1] On that day, Counselor Cox appeared in court with Mr. Smith; Attorney Smith was not present. Counselor Cox indicated that he and defense counsel had just engaged in some "discussions" and he had proposed a counter-offer to settle the case. There was no indication that the defense had agreed to a settlement and the defense confirmed that it had requested a jury trial, something Mr. Smith was then willing to waive. The defendant, however, was not

[1] The trial judge noted that the motion may not have been "properly filed" because it is "still not in the queue" and "it's not come up to my attention." The docket entries reflect that the "deficiency" was cured on Friday, November 2, 2018, three days before the trial date.

interested in waiving her right to a jury trial and defense counsel noted that he had submitted proposed *voir dire* and jury instructions months ago.

A discussion then ensued regarding the outstanding *pro hac vice* motion. When the court inquired as to the whereabouts of Attorney Smith, Counselor Cox replied that he was in Atlanta, where he had relocated - although he "still keeps his practice active here." The court was not pleased that Attorney Smith was absent, given that the *pro hac vice* motion had not been ruled on and commented that the waiver of his presence should not have been presumed. The court also noted that, plaintiff's counsel had not submitted proposed jury instructions or *voir dire.* Ultimately, the court stated it would not grant the motion "in the absence of [Attorney] Smith's active supervision" and declined to waive his presence at trial. The court, therefore, denied the request to specially admit Counselor Cox as co-counsel in the case.

Defense counsel then reminded the court that this was the third trial date, that his client was present, and they were prepared to try the case before a jury that day. Defense counsel informed the court that he and Counselor Tillman had previously agreed to "proceed by way of a jury trial and also under 10-104 of the Courts & Judicial Proceedings Article," that is, "that the medical bills and records that either party wanted to submit were admissible under 10-104 with the understanding that under that statute, that any judgment would not exceed $30,000." In short, defense counsel asserted that "it's not complicated and I'm ready to go." If Mr. Smith was not ready to proceed unrepresented that day, defense counsel requested a dismissal with prejudice because a dismissal without prejudice would "be a de facto new postponement[.]"

Mr. Smith informed the court that he was a mechanic by trade and did not feel comfortable representing himself at trial. During a 20-minute recess, defense counsel spoke with Attorney Smith by telephone in an attempt to settle the case, which was not successful. Mr. Smith also spoke with Attorney Smith during that recess. After the recess, Mr. Smith asked the court for a continuance, claiming that Attorney Smith would be here next time to represent him. Defense counsel opposed the request for a continuance. When Mr. Smith then chose not to proceed self-represented, the court granted defense counsel's motion to dismiss the case with prejudice. Eight days later, Mr. Smith filed a *pro se* motion to alter or amend the judgment, which the court denied. He then noted this timely appeal.

DISCUSSION

Mr. Smith, representing himself on appeal, presents the following question for our review, which we quote:

> Did the trial court abuse its discretion in denying a Pro Hac Vice motion and was the trial court dismissal of Appellant's claim with prejudice without a hearing legally correct under Maryland Rule 2-311 which requires a hearing if the court's ruling would be dispositive of a claim or defense?

He contends that "[b]y granting Appellee's motion to dismiss with prejudice, the trial court's decision was not legally correct." Specifically, he argues that "[t]he trial court's decision to grant Appellee's motion to dismiss with prejudice was not legally correct because the Appellant was not granted a hearing as required by Maryland Rule 2-311."

As to the court's decision regarding Counselor Cox, Mr. Smith acknowledges that the trial judge had "latitude to" deny the *pro hac vice* motion. But he asserts it "was an abuse of that discretion considering the facts of the case."

In his brief, Mr. Smith also states that "at the very least . . . he should have been granted a continuance instead of a full dismissal of the case" because "no party would have been prejudiced with a continuance." And "[j]ustice was not served as Appellant never got his time in court."

Appellee responds that the trial court "acted well within its discretion" in denying the motion for special admission, noting that (1) the motion had not been ruled on when the case was called for trial and, hence Attorney Smith's presence had not been waived; and (2) "the record reflects" that Counselor Cox did not "have sufficient familiarity with Maryland's rules of procedure." Appellee does not point to anything in the record, however, to support her second point.

Appellee also points out that, on the morning of the scheduled trial date, the motion to specially admit Counselor Cox, Mr. Smith's oral motion for a continuance, and defense counsel's oral motion to dismiss the case with prejudice upon Mr. Smith's decision not to proceed without counsel were all heard on the record in open court. Hence, appellee maintains that there was no violation of Maryland Rule 2-311 because a hearing was in fact held on all three motions.

Appellee does not address whether the court abused its discretion in not granting Mr. Smith's request for a continuance and in dismissing the case with prejudice,

presumably not reading Mr. Smith's brief to include those as questions presented for our review.

Denial of Special Admission of Counselor Cox

Maryland Rule 19-217 governs the "special admission of out-of-state attorneys *pro hac vice*." It provides, in relevant part:

> (a) *Motion for Special Admission.*
>
> (1) *Generally.* A member of the Bar of this State who is an attorney of record in an action pending (i) in any court of this State . . . , may move that an attorney who is a member in good standing of the Bar of another state be admitted to practice in this State for the limited purpose of appearing and participating in the action as co-counsel with the movant.
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> ***
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> (c) *Order.* The court by order may admit specially or deny the special admission of an attorney.
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> ***
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> (d) *Limitations on Out-of-State's Attorney's Practice*. An attorney specially admitted pursuant to this Rule may act only as co-counsel for a party represented by an attorney of record in the action who is admitted to practice in this State. The specially admitted attorney may participate in the court or administrative proceedings only when accompanied by the Maryland attorney, unless the latter's presence is waived by the judge or administrative hearing officer presiding over the action.

Rule 19-217(d) clearly provides that, if the motion is granted, the "specially admitted attorney may participate" in the court proceedings as "co-counsel" with the movant. Absent an express waiver by the court, the specially admitted attorney must be "accompanied by the Maryland attorney" in any court proceedings.

The motion to specially admit Counselor Cox was pending on the morning of the scheduled jury trial, the deficiency in its filing having been cured on the Friday before the start of Monday's trial. Attorney Smith was not present in the courtroom. When the court inquired as to why Attorney Smith was not present, Counselor Cox replied: "I think that he has relocated to Atlanta, Your Honor. But he still keeps his practice active here." The court again asked, "But why is he not here?" Counselor Cox replied: "Your Honor, I can't answer that question for you." Defense counsel pointed out that, although Attorney Smith may have relocated to Atlanta, "he did so before this suit was filed" and that Attorney Smith "did show up with his client at the pre-trial conference." Given these circumstances, we are not persuaded that the trial court abused its discretion in denying the motion to specially admit Counselor Cox.

Dismissal Without a Rule 2-311 Hearing

We agree with Appellee that the trial court did not rule on the motion to dismiss with prejudice without a hearing in violation of Md. Rule 2-311. The 29-page transcript reflects that open court proceedings began at 9:33a.m. and concluded at 10:36a.m. on November 5, 2018. The *pro hac vice* motion was heard and decided. The court, after a short recess, then entertained Mr. Smith's oral request for a continuance. And after denying the motion to continue, the court considered and ruled on defense counsel's motion to dismiss the case with prejudice. Rule 2-311 did not require more.

Denial of Continuance Request & Dismissal with Prejudice

Mr. Smith did not specifically raise in his "Questions Presented" for appellate review whether the trial court abused its discretion in denying his request for a continuance

and in dismissing his case with prejudice (outside the context of dismissal *without a hearing*). But in his brief he states: "At the very least, Appellant believes he should have been granted a continuance instead of a full dismissal of the case. No party would have been prejudiced with a continuance. Justice was not served as Appellant never got his time in court."

Maryland Rule 8-504(a)(3) provides that an appellate brief shall include a "statement of the questions presented, separately numbered, including the legal propositions involved[.]" In *Peterson v. Evapco, Inc.*, 238 Md. App. 1, 62 (2018), we declined to address the appellants' "catch all argument" made in the brief, noting that appellants "can waive issues for appellate review by failing to mention them in their 'Question Presented' section of their brief." (Citation omitted.) We hold that Mr. Smith waived any claim that the court abused its discretion in denying his motion for a continuance and in dismissing his complaint with prejudice by failing to include these issues in his Questions Presented for our review. Nonetheless, if not waived, we would affirm.

Pursuant to Md. Rule 2-508(a), "the court may continue or postpone a trial or other proceeding as justice may require." In *Touzeau v. Deffinbaugh*, 394 Md. 654 (2006), the Court of Appeals explained the intent of the Rule and our standard of review:

> We have not specified what the phrase "as justice may require" means, but have said that the decision to grant a continuance lies within the sound discretion of the trial judge. Absent an abuse of that discretion we historically have not disturbed the decision to deny a motion for continuance. We have defined abuse of discretion as discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.

394 Md. at 669 (internal citations and quotations omitted).

In other words, "an abuse of discretion exists where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles." *Sumpter v. Sumpter*, 436 Md. 74, 85 (2018) (quotation omitted). As such, a court's exercise of that discretion will only be reversed if the court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *In re Andre J.*, 223 Md. App. 305, 323 (2015) (quotation omitted).

Here, we cannot say that the court's decision to deny Mr. Smith's request for a postponement was so far beyond the fringe of what we would deem minimally acceptable to be an abuse of discretion. This was the third scheduled trial date; the continuance request was made on the morning of trial; the defense opposed the request; the plaintiff, with the defense's consent, had been granted two prior continuances; and the court was not given *any* explanation for Attorney Smith's absence.

We also perceive no abuse in the court's exercise of its discretion to dismiss the case with prejudice. After the *pro hac vice* motion was denied, the court took a 23-minute recess so that Mr. Smith could discuss a possible settlement with defense counsel. During that break, both Mr. Smith and defense counsel spoke by telephone with Attorney Smith. A settlement was not reached. Mr. Smith then requested the continuance, asserting that Attorney Smith would be in court the next time to represent him. Defense counsel was prepared for trial and opposed another postponement. After denying the continuance

request, Mr. Smith was given the opportunity to proceed self-represented, which he declined. Given these facts - and the lack of any explanation for Attorney Smith's absence - we cannot say that the trial court's dismissal of the case with prejudice was manifestly unreasonable or beyond the fringe of what we would deem minimally acceptable.

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