APPENDIX A

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 18-CV-309

ROSANNE L. WOODROOF, APPELLANT,

v.

JOSEPH F. CUNNINGHAM, *et al.*, APPELLEES.

Appeal from the Superior Court
of the District of Columbia
(CAM-6474-13)

(Hon. Brian F. Holeman, Trial Judge)

(Submitted September 16, 2019 Decided October 3, 2019)

Before EASTERLY and MCLEESE, *Associate Judges*, and NEBEKER, *Senior Judge.*

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant Rosanne L. Woodroof appeals the Superior Court's dismissal with prejudice of her complaint against the Estate of Joseph F. Cunningham and Cunningham & Associates, PLC for legal malpractice. Specifically, appellant argues that the trial court erred in two ways: (1) by granting appellee's motion to dismiss with prejudice for appellant's failure to act with reasonable diligence to arbitrate her claims; and (2) by denying as moot both her motion to appoint an arbitrator pursuant to Section 5 of the Federal Arbitration Act and her motion to disqualify and remove

Cunningham's named arbitrator. We disagree and affirm.

I.

This case involves a lengthy dispute between the parties. In December 2008, appellant retained Joseph Cunningham to represent her in a lawsuit against her condominium board. As part of that relationship, they both signed a written retainer agreement, which incorporated an arbitration agreement. The arbitration agreement contained the following provisions: (1) "any dispute as to legal malpractice . . . will be determined by submission to arbitration as provided by District of Columbia law;" (2) "[e]ach party shall select an arbitrator . . . within thirty days, and a third arbitrator . . . shall be selected by the arbitrators appointed by the parties within thirty days thereafter;" and (3) "[a] claim shall be waived and forever barred if . . . the claimant fails to pursue the arbitration claim in accordance with the procedures herein with reasonable diligence." Their relationship soured, and in September of 2013, appellant filed suit against Joseph Cunningham and Cunningham & Associates, PLC for legal malpractice. The case was stayed for arbitration. As required by the arbitration agreement, Joseph Cunningham named his arbitrator within the 30-day window. Appellant did not. Instead, she appealed the trial judge's order staying the case for arbitration. This court affirmed that order in October of 2016.

Rather than proceeding with the contractually agreed upon method of arbitration, appellant spent the

next year and a half seeking various ways to alter the arbitration process. In response, the defense filed a motion to dismiss. By the June 30, 2017 status hearing, appellant still had not named her arbitrator, as required by her arbitration agreement. The trial court ordered her to name an arbitrator by July 30, 2017, or her case would be dismissed for want of prosecution. On July 28, 2017, nearly four years after filing her suit for legal malpractice, appellant finally named her arbitrator. During the nearly four years it took for appellant to do so, Joseph Cunningham passed away; his estate was substituted as a party.

After appellant named her arbitrator, the arbitration process finally began. Appellant's arbitrator and appellee's arbitrator worked together to find a third, neutral arbitrator, as required by the arbitration agreement. They were successful. By September of 2017, the three-party arbitration panel had compiled a set of conditions and rules for the parties to approve. Appellee approved the conditions and rules; appellant did not. Over the next month, appellant repeatedly refused both to agree to the panel's conditions and rules and to pay her portion of the retainer required to pay the neutral arbitrator. Unable to proceed because of appellant's refusals, the neutral arbitrator resigned.

One week later, appellee re-filed a motion to dismiss. Appellant responded, reiterating arguments the trial court previously rejected. In addition, she filed a motion to appoint a neutral arbitrator and disqualify appellee's arbitrator, a motion for leave to file an amended complaint, a request for sanctions, and a

motion to make a powerpoint presentation to the trial court on these issues. On February 16, 2018, the trial court held a hearing on these issues as well as the pending motion to dismiss. At the hearing, the trial court denied appellant's motion for leave to file an amended complaint, denied her request for sanctions, and denied her motion to make a powerpoint. The trial court also granted appellee's motion to dismiss and denied as moot appellant's motions to appoint a neutral arbitrator and to disqualify appellee's arbitrator. Appellant appealed.

II.

First, appellant contends the trial court erred in dismissing her complaint for three reasons: (1) no evidence supported the trial court's decision; (2) no articulated explanation of the factors surrounding the trial court's decision was given; and (3) none of the pertinent factors support the trial court's dismissal.

> Super. Ct. Civ. R. 41(b) authorizes the trial court to involuntarily dismiss an action "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court." The decision to impose such a sanction is left to the discretion of the trial court, to be overturned only where the court "impos[es] a penalty too strict or unnecessary under the circumstances."

Solomon v. Fairfax Vill. Condo. IV Unit Owner's Ass'n, 621 A.2d 378, 379 (D.C. 1993) (quoting *Braxton v. Howard Univ.*, 472 A.2d 1363, 1365 (D.C. 1984)). "Among

the factors which the trial court should consider are: (1) the nature of the party's conduct, including whether it was willful; (2) the length of any delay in complying with the court's order; (3) the reasons for the delay; and (4) any prejudice to the opposing party." *District of Columbia v. Serafin*, 617 A.2d 516, 519 (D.C. 1992). Dismissal is warranted only "upon some showing of willful and deliberate delay by the plaintiff," and a determination that "appellee was prejudiced by appellant's delay." *Durham v. District of Columbia*, 494 A.2d 1346, 1351 (D.C. 1988). Against that standard, we consider whether the trial court abused its discretion in granting dismissal with prejudice under Rule 41(b).

During the February 16, 2018 hearing, the trial court heard argument from both parties and considered the record. Then, ruling from the bench, the trial court made the following findings: (1) appellant acted to delay and obstruct the proceedings that would have brought the case to resolution, initially by failing to name an arbitrator and then by bringing about termination of the arbitration process; (2) appellant's actions caused the case to proceed for nearly five years without resolution; (3) appellant made numerous frivolous filings, including those disputing the validity of the arbitration agreement, which both the trial court and this court have held to be valid; and (4) appellant's dilatory tactics prejudiced appellee because their primary witness, Joseph Cunningham, passed away during the pendency of the litigation. Thus, the trial court granted appellee's motion to dismiss and dismissed the

complaint with prejudice. We cannot say that the trial court erred in reaching its conclusions. It did not.

Despite appellant's contentions to the contrary, the record clearly shows that the trial court dismissed her complaint with prejudice because she intentionally, willfully delayed the arbitration proceedings, thereby irreparably prejudicing the defense. The trial court's decision is supported by ample evidence and clearly articulated findings. The trial court did not abuse its discretion in dismissing appellant's complaint.

III.

Next, appellant argues the trial court erred in denying as moot both her motion to appoint a neutral arbitrator under Section 5 of the Federal Arbitration Act and her motion to disqualify and remove appellee's named arbitrator.

We review the trial court's denial of a motion as moot for an abuse of discretion. *See Copeland v. Cohen*, 905 A.2d 144, 146 n.3 (D.C. 2006).

"[W]hen the issues presented are no longer 'live' or the parties lack 'a legally cognizable interest in the outcome,' a case is moot." *Settlemire v. District of Columbia Office of Emp. Appeals*, 898 A.2d 902, 904-05 (D.C. 2006). When the trial court dismissed appellant's complaint with prejudice, appellant lost any legally cognizable interest in the outcome of both her motion to appoint a neutral arbitrator and her motion to

disqualify and remove appellee's named arbitrator; both motions became moot. The trial court did not err, therefore, in dismissing either motion as moot.

For the foregoing reasons, the decision of the trial court is hereby

Affirmed.

ENTERED BY DIRECTION
OF THE COURT:

/s/ Julio A. Castillo
JULIO A. CASTILLO
Clerk of the Court

Copies to:

Honorable Brian F. Holeman

Director, Civil Division

Copies e-served to:

Rosanne L. Woodroof

J. Jonathan Schraub, Esquire

Madeline Kramer, Esquire

APPENDIX B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

ROSANNE WOODROOF,	
Plaintiff,	**Case No. 2013 CA 006474 M**
v.	**Calendar 12**
JOSEPH F. CUNNINGHAM, *et al.,*	**Judge Brian F. Holeman**
Defendants.	

OMNIBUS ORDER

(Filed Dec. 12, 2018)

This matter comes before the Court upon consideration of: Defendant's Motion for Entry of Written Order of Judgment, filed on March 22, 2018; Defendant's Motion for Leave to File Reply, filed on April 4, 2018; and Plaintiff's Motion for Leave to File Sur-Reply, filed on April 8, 2018.

I. PROCEDURAL HISTORY

The instant matter arises from the Complaint for Legal Malpractice, filed on September 24, 2013. On June 26, 2014, Defendants filed the Motion to Stay and Arbitrate, requesting that the Court stay the case and order the parties to engage in binding arbitration, pursuant to the terms of the Retainer Agreement and the Arbitration Agreement entered between the parties.

(Def.'s Mem. P. & A. in Support of Mot. To Stay at 1-2, Ex. 1.) The Court's Order of July 9, 2014 granted the Motion to Stay and Arbitrate. (Order, July 9, 2014 at 3.)

On July 19, 2014, Plaintiff filed the Motion for Consideration. On July 30, 2014, the Court denied the Motion for Consideration. On August 22, 2014, Plaintiff filed the Notice of Appeal. The issue on appeal was, *inter alia*, whether the Trial Court erred by ordering the parties to arbitrate the legal malpractice action. (Ct. of Appeals Order at 4, 25.) On January 4, 2017, the Court of Appeals affirmed the Trial Court's Order of July 9, 2014. (*Id.* at 35.)

On June 30, 2017, the Court convened the Status Hearing. The Court held in abeyance Defendants' Motion to Dismiss, and ordered that Plaintiff select an arbitrator by July 30, 2017.

On August 4, 2017, the Court convened the Status Hearing. The Court was apprised that Plaintiff complied with the Court's order issued on June 30, 2017, and selected an arbitrator. On October 9, 2017, Defendants filed Defendants' Motion to Dismiss.

On February 16, 2018, the Court convened the Status Hearing. The Court found that, following the selection of arbitrators, Plaintiff conducted herself such that the arbitration was terminated or in such a way that she prevented the arbitrators from moving forward. (*See* Mot. to Dismiss, Oct. 9, 2017, at Ex. D.) The Court ruled, *inter alia*, on Defendants' Motion to

Dismiss and dismissed the case with prejudice. On March 16, 2018, Plaintiff filed the Notice of Appeal.

II. THE APPLICABLE LAW

The Superior Court Rules of Civil Procedure, Rule 58, governs entry of judgment. It reads, in pertinent part:

> (a) *Separate Document.* Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:
>
> (1) for judgment under Rule 50(b);
>
> (2) to amend or make additional findings under Rule 52(b);
>
> (3) for attorney's fees under Rule 54;
>
> (4) for a new trial, or to alter or amend the judgment, under Rule 59; or
>
> (5) for relief under Rule 60.
>
> . . . .
>
> (c) *Time of Entry.* For purposes of these rules, judgment is entered at the following times:
>
> (1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or
>
> (2) if a separate document is required, when the judgment is entered in the civil docket under Rule 19(a) and the earlier of these events occurs:

> (A) it is set out in a separate document; or
>
> (B) 150 days have run from the entry in the civil docket.

(d) *Request for Entry.* A party may request that judgment be set out in a separate document as required by Rule 58(a).

Rule 12-1 governs filings with the Court. It states, in pertinent part:

> (g) *Reply.* Within 7 calendar days after service of the opposing statement, the moving party may file and serve a statement of points and authorities in reply to the following types of motions only:
>
> (1) motions for summary judgment;
>
> (2) motions to dismiss for failure to state a claim;
>
> (3) motions to strike expert testimony; and
>
> (4) motions for judgment on the pleadings.

The Supplement to the General Order further governs filings with the Court. It reads, in pertinent part, as follows:

> **Page Limits, Replies and Memoranda of Law:** When **any filing** is over fifteen (15) pages in total, a paper copy must be mailed to Chambers at the above address either through the postal service or by delivering a

> copy to the Inter-Office Mail Slot located on the first floor of the Moultrie Building, next to the Information offices. **Replies** to oppositions are **prohibited** without Court. **Memoranda of law** that exceed ten (10) pages in length are discouraged, and memoranda of law that exceed twenty (20) pages are **prohibited** without leave of Court.

III. DEFENDANTS' MOTION FOR LEAVE TO FILE REPLY

On April 4, 2018, Defendants filed the instant Motion. Defendants request leave to file the Reply to Plaintiff's Opposition to Defendants' Rule 58 Motion for Entry of Written Judgment (the "Reply"), attached as Exhibit A.

The Motion is the procedurally appropriate means to obtain relief, as the proposed Reply does not fall within the scope of Rule 12-I(g). However, the proposed Reply does not add further substance to Defendants' Motion for Entry of Written Order of Judgment.

IV. PLAINTIFF'S MOTION FOR LEAVE TO FILE SUR-REPLY

On April 8, 2018, Plaintiff filed the instant Motion. Plaintiff argues that "[t]he decision whether to grant or deny leave to file a sur-reply is committed to the sound discretion of the court." (Mot. at 1.)

The Superior Court Rules of Civil Procedure does not mention the right to file a surreply. There is no basis for grant of the instant Motion.

V. DEFENDANTS' MOTION FOR ENTRY OF WRITTEN ORDER OF JUDGMENT

On March 22, 2018, Defendants filed the instant Motion. Defendants argue that the Court "maintains jurisdiction to enter a written order memorializing the Court's rulings from the February 16, 2018 hearing despite Plaintiff's filing of a notice of appeal." (Mot. at ¶ 3.) Defendants represent that "[t]he Arlington Commissioner of Accounts will not close the Estate of Joseph Cunningham, Deceased without a written order from this Court identifying that judgment was entered in favor of Defendants, and Plaintiff's claims (and this action) were dismissed with prejudice." (Mem. P. & A. at 1.) Defendants assert that "[a] written order . . . does not result in the revocation or alteration of the Court's rulings or the judgment noticed for appeal by Plaintiff." (Mot. at ¶ 4.)

On April 1, 2018, Plaintiff filed Plaintiff's Opposition to Defendants' Motion for Entry of Written Order of Judgment. Plaintiff argues that "[t]his Court lacks jurisdiction to alter, amend, or otherwise amend an order where, as here, an appeal of the order has been perfected." (Opp'n. at ¶ 1.) Plaintiff further argues that the instant Motion is untimely, and that "Defendants baldly describe their plan to circumvent Plaintiff's right to appeal" as "Defendants admit that they are

attempting to close the estate of one of the defendants, dissipating the assets available to satisfy a judgment in Plaintiff's favor." (*Id.* at ¶¶ 3-4.) Plaintiff asserts that "Defendants' motion is also an obvious attempt to have this Court rewrite the record." (*Id.* at ¶ 5.)

The Court finds the arguments made in opposition unavailing. Rule 58 gives Defendants the right to request the entry of a written order. Defendants do not seek an amendment or alteration of the Court's rulings issued on February 16, 2018, under Rules 59(e) or 60. Rather, they are seeking the entry of a written order memorializing the Court's decision to dismiss the instant action on February 16, 2018.

WHEREFORE, it is this 12th day of December 2018, hereby

ORDERED, that Defendants' Motion for Leave to File Reply is **DENIED**; and it is further

ORDERED, that Plaintiff's Motion for Leave to File Sur-Reply is **DENIED**; and it is further

ORDERED, that Defendants' Motion for Entry of Written Order of Judgment is **GRANTED**; and it is further

ORDERED, that the Order of Judgment is issued concurrently herewith.

/s/ Brian F. Holeman
BRIAN F. HOLEMAN
JUDGE

Copy e-served to:

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Counsel for Defendants

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Rosanne L. Woodroof
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Warrenton, VA 20188
Plaintiff

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA CIVIL DIVISION

ROSANNE WOODROOF,	:	
Plaintiff,	:	**Case No. 2013 CA 006474 M**
v.	:	**Calendar 12**
JOSEPH F. CUNNINGHAM, *et al.*,	:	**Judge Brian F. Holeman**
Defendants.	:	

ORDER OF JUDGMENT

(Filed Dec. 12, 2018)

Upon consideration of the Status Conference convened on February 16, 2018, it is on this 12th day of December 2018, hereby

ORDERED, that judgment is entered in favor of Defendants Joseph F. Cunningham and Cunningham & Associates, PLC and against Rosanne L. Woodroof; and it is further

ORDERED, that the instant action is **DISMISSED WITH PREJUDICE**.

/s/ Brian F. Holeman
BRIAN F. HOLEMAN
JUDGE

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Warrenton, VA 20188
Plaintiff

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

CIVIL DIVISION

ROSANNE WOODROOF,	:	
Plaintiff,	:	Civil Action Number
versus	:	2013 CAM 6474
JOSEPH CUNNINGHAM, et al.,	:	
Defendants.	:	

Washington, D.C.
Friday, February 16, 2018

The above-entitled action came on for a hearing, before the Honorable BRIAN HOLEMAN, Associate Judge, in Courtroom Number 516.

THIS TRANSCRIPT REPRESENTS THE PRODUCT OF AN OFFICIAL REPORTER, ENGAGED BY THE COURT, WHO HAS PERSONALLY CERTIFIED THAT IT REPRESENTS TESTIMONY AND PROCEEDINGS OF THE CASE AS RECORDED.

APPEARANCES:

On behalf of the Plaintiff:

ROSANNE WOODROOF, Pro Se
Washington, D.C.

On behalf of the Defendants:

JONATHAN SCHRAUB,
Esquire Washington, D.C.

* * *

[Transcript Excerpt, Oral Rulings, pages 24-27]

[24] With all due respect to Ms. Woodroof, I mean, she has the law completely upside down. Our motion to dismiss simply is plain and simple. Enough is enough is enough already. We do not have to go through this multiple times until Ms. Woodroof is satisfied that she has the panel that will do – that will do the arbitration the way she thinks an arbitration ought to be done.

These three arbitrators decided themselves what the rules were going to be. I didn't tell them. She didn't tell them. They decided, wrote to us and said here are going to be the rules. She wouldn't agree. That was the end of it.

Judge, there's no justification to make us start this process all over again.

THE COURT: No, the Court agrees. And the Court grants the motion to dismiss that was filed on October 9, 2017.

What we have here is an effort to delay and obstruct the proceedings that would have brought this case to resolution. This filing of documents that are

completely irrelevant to the issue of arbitration or to the issue of what is to be arbitrated the Court finds troubling.

[25] Further, the notion that the Court, at this late state, would be requested to grant a motion to file an amended complaint, the facts in this case haven't changed over the five years that this case has been pending. The only unfortunate circumstance here is Mr. Cunningham, who was the lawyer, died during the pendency of all of this.

This record is replete with multiple filings that have absolutely nothing to do with the issues before the Court. This Court's prior ruling, having said similar things in prior hearings, was affirmed by the Court of Appeals in its order of July 9th, 2014.

So this Court is not inclined to hear any further argument concerning whether or not an arbitration is required. It is.

This Court is not inclined to hear any further argument as to whether the arbitration process, the process of selection was unfair. It was not.

This Court is not inclined to hear any further argument with regard to the disposition of the case following arbitration. It did not occur, and it did not occur because of Ms. Woodroof's desire, on this record, to not go forward with the arbitration. Whether it be that her preferences were not met or that she didn't have the money to the arbitrator, in this Court's view, is beside the point.

[26] The fact is that arbitration was required, she essentially conducted herself in such a way as to terminate the arbitration or render it such that the arbitrators could not go forward with their process.

Motion to dismiss is granted, and all of the remaining motions, including the motion to appoint a neutral arbitrator, denied as moot.

Motion for leave to file a reply to defendants' opposition, denied as moot.

Motion for leave to file an amended complaint, denied. No. I apologize. The motion for leave to file a reply on defendants' opposition, granted; however, that opposition added absolutely nothing to the substantive issue for this Court. So reply taken into account adds nothing to the Court's analysis to the issue before it.

Motion for leave to file an amended complaint, denied.

Motion for leave to file a reply to defendants' opposition, granted, again, like has been stated before.

The document substantively adds nothing more than has already been addressed and presented to this Court. There's the representation about proposed amendments that are necessary, as the arbitration panel members were confused about the scope of the arbitration. In my view, on this record, there could not have been any [27] confusion with the panel of arbitrators. And certainly none of them were called into court on behalf of Ms. Woodroof to support any claim that she has made here today.

Let me see if I've left anything out.

MS. WOODROOF: Your Honor.

THE COURT: Excuse me.

MS. WOODROOF: Your Honor.

THE COURT: Excuse me.

Motion for leave to file a reply brief in support of the motion to dismiss, granted, deemed filed. Let's see. This was filed on October 26th. The reason for that grant, the defendant had the right to file a reply without leave of Court, and the opposition was timely filed.

I believe that I've covered every outstanding motion here.

The case is dismissed. The parties are excused. Please vacate the tables so that other litigants can approach.

MR. SCHRAUB: Thank you very much.

THE COURT: Thank you.

MR. SCHRAUB: Thank you very much, Your Honor.

(Proceedings adjourned at 1:41 p.m.)

* * *

APPENDIX C

District of Columbia
Court of Appeals

No. 18-CV-309

ROSANNE L. WOODROOF,

Appellant,

v. **CAM6474-13**

JOSEPH F. CUNNINGHAM, *et al.*,

Appellees.

BEFORE: Easterly and McLeese, Associate Judges, and Nebeker, Senior Judge.

ORDER

(Filed Feb. 4, 2020)

On consideration of appellant's motion to publish and it appearing no opposition was filed, it is

ORDERED that appellant's motion to publish is denied.

PER CURIAM

Copies e-served to:

Rosanne L. Woodroof

J. Jonathan Schraub, Esquire

Madelaine Kramer, Esquire

oio

District of Columbia
Court of Appeals

No. 18-CV-309

ROSANNE L. WOODROOF,

Appellant,

v. **CAM6474-13**

JOSEPH F. CUNNINGHAM, *et al.*,

Appellees.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Fisher, Thompson, Beckwith, Easterly,* McLeese,* and Deahl, Associate Judges; Nebeker,* Senior Judge.

ORDER

(Filed Feb. 4, 2020)

On consideration of appellant's motion for leave to file the lodged petition for rehearing or rehearing *en banc*, appellant's motion to exceed page limit for the lodged petition for rehearing or rehearing *en banc*, appellant's expedited motion for leave to file the lodged amended petition for rehearing or rehearing *en banc*, it is

ORDERED that appellant's motion for leave is granted, and the Clerk shall file appellant's lodged petition for rehearing or rehearing *en banc.* It is

FURTHER ORDERED that appellant's motion to exceed page limit for the lodged petition for rehearing or rehearing *en banc* is granted. It is

FURTHER ORDERED that appellant's expedited motion for leave is granted and the Clerk shall file the lodged amended petition for rehearing or rehearing *en banc.* It is

FURTHER ORDERED by the merits division* that the petition and amended petition for rehearing are denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc.* It is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

No. 18-CV-309

Copies to:

Honorable Brian F. Holeman

Director, Civil Division

Copies e-served to:

Rosanne Woodroof

J. Jonathan Schraub, Esquire

Madelaine Kramer, Esquire

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Additional material from this filing is available in the Clerk's Office.