
SUPREME COURT OF THE UNITED STATES

No.:

Derek N. Jarvis,
Petitioner

vs.

Isiah Leggett, Et Al.,
Respondent

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Apx A-Email from
Michael Subin

Subin, Michael

From: Subin, Michael
Sent: Friday, September 15, 2017 6:05 PM
To: Neufville, Sonetta
Cc: Stowe, James L.
Subject: Derek Jarvis

Sonetta,

Please pass on to Executive Staff amd 3-1-1 that Mr. Derek Jarvis has been told that any phone calls from him will be considered harassment and misuse of telephonic facilities and equipment. If he does call them, have his call passed on to me and please let me know when he called and what he said.

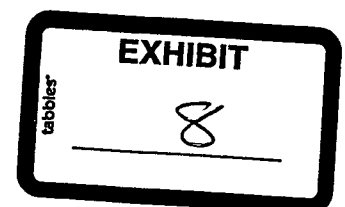
Thanks

Michael L Subin

Office of the County Executive

(240) 777-2530

michael.subin@montgomerycountymd.gov



UNITED STATES CODE

42 U.S.C. § 1983 Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

[Home Table of Contents](#)**RULE 1-104. UNREPORTED OPINIONS**West's Annotated Code of Maryland
Maryland RulesWest's Annotated Code of Maryland
Maryland Rules
Title 1. General Provisions
Chapter 100. Applicability and Citation

MD Rules, Rule 1-104

RULE 1-104. UNREPORTED OPINIONSCurrentness

(a) Not Authority. An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority.

(b) Citation. An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.

Committee note: A request that an unreported opinion be designated for reporting is governed by Rule 8-605.1 (b).

Source: This Rule is derived from former Rule 8-114, which was derived from former Rules 1092 c and 891 a 2.

Credits

[Former Rule 8-114 adopted Nov. 19, 1987, eff. July 1, 1988. Renumbered Nov. 12, 2003, eff. Jan. 1, 2004. Amended May 8, eff. July 1, 2007.]

MD Rules, Rule 1-104, MD R GEN Rule 1-104
Current with amendments received through August 1, 2020.

END OF

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DOCUMENT

Apx-D UNREPORTED OPINION
Court of Special Appeals
From Montgomery County
Circuit Court
No. 453925V

Circuit Court for Montgomery County
Case No: 453925V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 145

September Term, 2019

DEREK JARVIS

v.

ISIAH LEGGETT, *et al.*

Fader, CJ,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 3, 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.

In September 2018, Derek Jarvis, appellant, filed a complaint in the Circuit Court for Montgomery County against Isiah Leggett, the Montgomery County Executive's Office, and the Office of Human Rights. Though unnamed in the caption of Mr. Jarvis's complaint, Montgomery County, Maryland was also identified as a defendant in the body of the complaint. The complaint set forth four causes of action against the defendants, including two counts for violation of § 20-304 of the State Government Article, a count for "negligent training and supervision," and a count for "failure to intervene by county defendant."

In his complaint, Mr. Jarvis alleged that in September of 2017, two "management level employee[s]" of the County Executive's Office engaged in "threatening behavior via phone communication" and "refused to allow [him] to file a [c]omplaint of discrimination." His complaint further alleged that a "[h]ispanic staff member" of the Office of Human Rights refused to take his "complaint of discrimination" against a business and became "belligerent" and "hostile" with him.

The defendants, in response, filed a motion to dismiss asserting, in pertinent part, that several of the defendants were not subject to suit and that Mr. Jarvis had failed to state a claim upon which relief could be granted. While the motion to dismiss was pending, Mr. Jarvis filed a motion to transfer venue contending, in pertinent part, that the defendants and county attorneys who represented them had "a direct relationship with the court" which created a "conflict of interest" and the "appearance of impropriety." The motion to transfer venue was denied without a hearing. At the conclusion of a February 26, 2019 hearing on

the defendants’ motion to dismiss, the court dismissed Mr. Jarvis’ complaint with prejudice.

On appeal, Mr. Jarvis raises the following questions for our review, which we consolidate and rephrase for clarity:¹

1. Did the trial court err in dismissing with prejudice Mr. Jarvis’s complaint as to Defendant, Isiah Leggett?
2. Did the trial court err in dismissing each count of Mr. Jarvis’s complaint for failure to state a claim upon which relief could be granted?
3. Did the trial court err in denying Mr. Jarvis’s Motion to Transfer Venue?

For the following reasons, we shall affirm the decision of the circuit court.

DISCUSSION

I. Separate Document Requirement

Though the circuit court made an oral ruling at the motions hearing on February 26, 2019, the court failed to comply with Maryland Rule 2-601(a)(1) which mandates that “[e]ach judgment shall be set forth on a separate document.” The record does not contain a separate document reflecting that the court had dismissed Mr. Jarvis’s complaint with prejudice. There is, however, a docket entry entered by the clerk on February 26, 2019 which reads: “Court Dismisses Case with Prejudice” and “Court (Rupp, J.) grants Defendant’s Motion to Dismiss with Prejudice.”

¹ Mr. Jarvis also requests that this Court review whether the trial court erred when it “issued [a] pre-filing injunction.” Though the defendants requested at the February 26, 2019 motions hearing that a pre-filing injunction be imposed on Mr. Jarvis pursuant to Maryland Rule 15-502, the court specifically stated that it was “not going to grant that request.” Accordingly, this issue is not presently before the Court for review.

The separate document requirement may, however, be waived “where a technical application of the separate document requirement would only result in unnecessary delay.” *URS Corporation v. Fort Myer Construction Corporation*, 452 Md. 48, 67 (2017). Moreover, strict compliance with the separate document rule can be “waived, at least where ... the trial court intended the docket entries made by the court clerk to be a final judgment and where no party objected to the absence of a separate document after the appeal was noted.” *Id.* at 68.

In the present appeal, no party has objected to the absence of a separate document reflecting the court’s ruling and the clerk’s docket entry accurately sets forth the substance of the court’s oral ruling and judgment. Accordingly, we deem the lack of a separate document to be waived.

II. Motion to Dismiss

Under Maryland Rule 2-322(b)(2), a defendant may seek a dismissal of a complaint if it fails “to state a claim upon which relief can be granted.” This Court, in reviewing the grant of a motion to dismiss, “must determine whether the Complaint, on its face, discloses a legally sufficient cause of action.” *Scarborough v. Transplant Res. Ctr. of Maryland*, 242 Md. App. 453, 472 (2019) (citation omitted). In doing so, we “presume the truth of all well-pleaded facts in the Complaint, along with any reasonable inferences derived therefrom in a light most favorable to the plaintiffs.” *Id.* We will hold that the grant of a motion to dismiss is proper where “the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.” *Id.*

Dismissal as to Isiah Leggett

On appeal, Mr. Jarvis asserts that the circuit court erred in dismissing his complaint against Isiah Leggett, the former Montgomery County executive, with prejudice. As grounds for the dismissal of Mr. Leggett, the court concluded that there was “nothing...contained within the pleadings that would allow any inference that Isiah Leggett was personally involved in any of these activities” alleged in the complaint.

Upon review of the complaint, we do not find, nor does Mr. Jarvis direct this Court to facts alleging specific actions of wrongdoing by Mr. Leggett. While we recognize that a plaintiff need not “state minutely all the circumstances which may conduce to prove the general charge,” *Simms v. Constantine*, 113 Md. App. 291, 296 (1997), Mr. Jarvis was required to describe the claim with “such reasonable accuracy as will show what is at issue between the parties.” *Richard F. Kline, Inc. v. Shook Excavating & Hauling, Inc.*, 165 Md. App. 262, 275 (2005).

The only specific acts referenced in Mr. Jarvis’s complaint related to the actions of two “management level employees” at the Montgomery County Executive’s Office and a single employee at the Office of Human Rights. The complaint alleged that these individuals refused to accept a complaint of discrimination from Mr. Jarvis and that they used offensive and racially disparaging language towards him. The complaint did not specify any involvement by Mr. Leggett with these acts. On this ground alone, it was proper for the court to dismiss the complaint as to Isiah Leggett.

Dismissal of the Four Counts with Prejudice

On appeal, Mr. Jarvis asserts that the court erred in dismissing his complaint because the complaint “stated valid and cognizable claims.” Though Mr. Jarvis acknowledges that his complaint was divided “into four claims for relief,” his brief does not specify what those claims were, nor does it argue with particularity why each claim was “valid and cognizable.” We, therefore, decline to consider on appeal whether the court erred in dismissing each count of Mr. Jarvis’s complaint for failure to state a claim upon which relief could be granted. *See* Maryland Rule 8-504(a)(5) (stating that an appellate brief shall contain “[a]rgument in support of the party’s position.”); *Klauenberg v. State*, 355 Md. 528, 552 (1999) (stating that “arguments not presented in a brief or not presented with particularity will not be considered on appeal”).

Even were we to exercise review, we do not discern any error by the court in determining that the four counts asserted by Mr. Jarvis failed to state a claim upon which relief could be granted. The first two counts of Mr. Jarvis’s complaint alleged that the defendants violated § 20-304 of the State Government Article. This article provides that:

[a]n owner or operator of a place of public accommodation or an agent or employee of the owner or operator may not refuse, withhold from, or deny to any person any of the accommodations, advantages, facilities, or privileges of the place of public accommodation because of the person’s race, sex, age, color, creed, national origin, marital status, sexual orientation, gender identity, or disability.

Mr. Jarvis’s complaint, however, does not allege that the defendants either owned or operated a “place of public accommodation” as defined by § 20-301 of the State Government Article. Further, his complaint does not allege that he was denied “the

accommodations, advantages, facilities, or privileges” associated with a “place of public accommodation.” Though he alleges that he was racially discriminated against, the complaint does not set forth that the “management level employee[s]” at the County Executive’s Office were aware of his race given that their alleged interaction was over the phone.

As to Mr. Jarvis’s claim of negligent training and supervision, the complaint did not set forth facts which, even if proven, would afford him relief. The complaint did not specify what training or supervision was required by the defendants, nor did it assert a causal connection between the alleged lack of training and supervision to the nondescript harms suffered by Mr. Jarvis. Lastly, as to the remaining count alleging a “failure to intervene,” Maryland law does not recognize such a claim in these circumstances.

III. Motion to Transfer Venue

In reviewing the court’s denial of a motion to transfer venue, we exercise the abuse of discretion standard. *Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 401 (2017). An abuse of discretion occurs “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.” *Azizova v. Suleymanov*, 243 Md. App. 340, 373 (2019) (citation omitted). Further, “when reviewing a motion to transfer,” we are “reluctant to substitute [our] judgment for that of the trial court.” *Smith v. Johns Hopkins Cmty. Physicians, Inc.*, 209 Md. App. 406, 413 (2013) (citation omitted).

We do not perceive any abuse in the court’s discretion in denying Mr. Jarvis’s motion to transfer venue. Pursuant to Maryland Rule 2-327(c), the court was permitted to

transfer the “action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice.” As we have previously stated, however, “[a] motion to transfer should be granted only when the balance weighs strongly in favor of the moving party.” *Stidham v. Morris*, 161 Md. App. 562, 567 (2005). In making that determination, a court should consider “the convenience of the witnesses and those public-interest factors of systemic integrity and fairness that, in addition to private concerns, come under the heading of ‘the interest of justice.’” *Id.*

The complaint asserts that all parties involved either resided in or were governmental entities of Montgomery County, Maryland. Montgomery County was, therefore, a proper and convenient venue for all parties involved. Further, it was reasonable for the court to conclude that it could be impartial in the handling of Mr. Jarvis’s complaint.

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

Appendix-E

Petition for
A writ of
Certiorari

To The Court
of Appeals
Of Maryland

DENIED, August 21,
2020

DEREK N. JARVIS

v.

ISIAH LEGGETT

* **IN THE**
* **COURT OF APPEALS**
* **OF MARYLAND**
* **Petition Docket No. 122**
* **September Term, 2020**
* **(No. 145, Sept. Term, 2019**
* **Court of Special Appeals)**
* **(No. 453925V, Circuit Court**
for Montgomery County)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals, the “Motion for Waiver on Civil Filing Fees,” and the answers filed thereto, in the above-captioned case, it is this 21st day of August, 2020

ORDERED, by the Court of Appeals of Maryland, that the filing fee in this Court be, and it is hereby, **WAIVED**, and it is further

ORDERED, that the petition be, and it is hereby, **DENIED** as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Mary Ellen Barbera
Chief Judge