DISTRICT OF COLUMBIA COURT OF APPEALS

No. 20-CV-269

ANDRIA DODWELL-WRIGHT, APPELLANT,

V.

NATIONWIDE INSURANCE COMPANY, *et al.*, APPELLEES.

Appeal from the Superior Court
of the District of Columbia
(2017-CA-003534-B)

(Hon. Heidi Pasichow, Trial Judge)

(Submitted November 8, 2022 Decided February 8, 2023)

Before BLACKBURNE-RIGSBY, *Chief Judge*, ALIKHAN, *Associate Judge*, and FERREN, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: The appellant, Andria Dodwell-Wright, was in a car accident with another driver that did not result in a settlement. Proceeding pro se, appellant sued her insurer (Nationwide Insurance Company), the other car's driver (Fatoumato Diallo), and the other car's owner (Mory Traore). Continuing pro se, appellant seeks review of the Superior Court's (1) denial of her motion to reconsider its refusal to grant her leave to amend her complaint pursuant to Super. Ct. Civ. R. 59(e)[1] or 60(b);[2] (2) dismissal of her complaint against Nationwide under Super. Ct. Civ. R.

[1] Super. Ct. Civ. R. 59(e) ("A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.").

[2] Super. Ct. Civ. R. 60(b)(1) ("On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . mistake, inadvertence, surprise, or excusable neglect.").

12(b)(6);[3] and (3) dismissal of her complaint against Diallo and Traore for want of prosecution under Super. Ct. Civ. R. 41(b).[4] We affirm.

I. Background

Appellant and Diallo were in a car accident in May 2014. Appellant suffered injuries to her neck and lower back. Nearly three years after the accident, in May 2017, she filed a complaint in the Superior Court against Nationwide, Diallo, and Traore. She alleged that Nationwide had "a duty of care to investigate and settle her matter in a way that [wa]s most beneficial to" her but had failed to "adequately address [her] medical issues by suitably settling the matter," thereby committing breach of contract, bad faith, fraud, and negligence. As for Diallo and Traore, appellant argued that, "by their failure to work with [appellant] and reach an acceptable settlement," they acted in bad faith and committed fraud.

In October 2017, the court dismissed appellant's claims against Nationwide without prejudice for improper service. Appellant then failed to appear for a scheduling conference in January 2018 and the court dismissed her claims against Diallo and Traore without prejudice for want of prosecution.

Appellant moved to reinstate her case against Diallo and Traore, stating that she had been the victim of a crime on the morning of the conference. The defendants did not oppose the motion, and the court granted it, reopening the case against Diallo and Traore in December 2018. In March 2019, appellant again failed to appear for a scheduling conference, and the court again dismissed the claims against Diallo and Traore without prejudice for want of prosecution. That same day, appellant filed a motion to reinstate, representing that she had missed the conference because of jury duty. The court granted her motion, reinstating the claims against Diallo and Traore once more in April.

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[3] Super. Ct. Civ. R. 12(b)(6) ("[A] party may assert the following defenses by motion: . . . failure to state a claim upon which relief can be granted.").

[4] Super. Ct. Civ. R. 41(b) ("If the plaintiff fails to prosecute or to comply with these rules or a court order . . . the court may, on its own initiative, enter an order dismissing the action or any claim.").

Nationwide

Appellant properly served a copy of her complaint on Nationwide in August 2019, and Nationwide promptly filed a motion to dismiss under Rule 12(b)(6).[5] On September 13, 2019, the court held a status hearing that set various deadlines, including appellant's deadlines for filing an amended complaint and a response to Nationwide's motion to dismiss, and the date of the next status hearing.

More specifically, the court set September 27, 2019, as the deadline for filing an amended complaint against Nationwide. The court also clarified the difference between an amended complaint and a response to Nationwide's motion to dismiss. During this exchange, the court misidentified September 21 as the amended complaint's due date. Appellant asked for clarification, "I thought you said the 27th," and the court responded, "I'm sorry, the 27th." The court then reiterated the correct date, and appellant reaffirmed that understanding. The court set October 4 as the deadline for appellant to respond to Nationwide's motion to dismiss.

Later, during the September 13 hearing, the court set a time for a status hearing on the amended complaint that appellant intended to file and any new motions: November 15 at 2:00 pm. During this exchange, appellant asked the court to repeat the date because she "didn't hear" the court. The court gave the date again and appellant confirmed that she understood.

Toward the end of the hearing, the court and appellant confirmed all the dates one last time because appellant had said that she "got a little confused" when the court set the dates earlier in the hearing. The court walked through the dates with her, and she confirmed her understanding of the day on which each filing was due—the amended complaint on September 27 and a response to the motion to dismiss on October 4.

On September 27, appellant filed an opposition to Nationwide's motion to dismiss, but she did not file an amended complaint. She argued in her response that she "should be given the right . . . to amend her Verified Complaint" before the court considered dismissal under Rule 12(b)(6).[6] But absent an amended complaint, the

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[5] *See supra* note 3.

[6] *See supra* note 3.

court granted Nationwide's motion to dismiss the claims against Nationwide with prejudice for failure to state a claim.

In response to the dismissal of Nationwide, appellant filed a motion to reconsider under Rule 59(e),[7] arguing that she had misunderstood the court's directives about the deadlines to amend her complaint and respond to the motion to dismiss. She explained that she "suffers from an 80% hearing loss in one ear and some loss of hearing in her other ear and she has 'closed head injury' as a result of a previous accident." Furthermore, she noted that the court had never issued a written order memorializing the dates. She also argued that her opposition to the motion to dismiss—which also requested leave to amend the complaint—further evidenced her misunderstanding.

The court denied this motion with analyses under Rules 60(b)[8] and 59(e). The Rule 60(b) analysis addressed appellant's argument about confusion and hearing loss. The court pointed to her repeated responses in which she confirmed her understanding of the dates specified at the September 13 hearing. Even without reason to doubt appellant's hearing loss, therefore, the court observed that "the entire record reveals that Plaintiff understood the filing deadline for the Amended Complaint [against Nationwide], and the Court does not find that Plaintiff's medical issues amount to excusable neglect." In reviewing for an "error of law" under Rule 59(e), the court explained how appellant had failed to provide sufficient facts to substantiate each of her claims. Finally, the court set a status hearing for February 21, 2020, to address the facts applicable to appellant, Diallo, and Traore.

Diallo and Traore

Appellant did not appear at the February 21 status hearing. The court tried to reach her at three different phone numbers but failed. Diallo also missed the hearing,[9] but she was on her way to the courthouse when the court ended the hearing

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[7] *See supra* note 1.

[8] *See supra* note 2.

[9] Diallo and Traore required an interpreter's assistance at this and other hearings.

and dismissed appellant's claims against Diallo and Traore under Rule 41(b)[10] without prejudice for want of prosecution.

In response to the dismissal of her remaining claims, appellant filed a motion to reinstate the case against Diallo and Traore. She explained that a medical condition had caused her to miss the February 21 hearing and attached a doctor's note dated March 2. The note read, "Please excuse Andr[i]a Dodwell Wright 2/18/2020 – 2/23/2020 due to medical illness." After considering this motion, the court denied it without prejudice. The order denying the motion to reinstate recounted the three-year history of the case during which two different judges had dismissed it for want of prosecution. The court then recognized how delays in prosecuting a case can harm both the parties and the court system as a whole. Ultimately, the court concluded that appellant had not provided good cause to vacate its dismissal of her claims.

In denying appellant's motion to reinstate, the court highlighted that the doctor's note did not provide medical reasons for the absence. Moreover, her motion did not explain why she had not contacted the court before the hearing when, per the doctor's note, her illness had begun three days before the hearing. Nor did the motion explain why she had missed the court's phone calls during the hearing. Finally, the court questioned whether the doctor's note, which was signed eight days after appellant's illness ended, accurately reflected her condition on the day of the hearing. Given these facts, the court denied the motion without prejudice. Appellant timely appealed.

I. Analysis

Appellant appeals three trial court orders: (1) denial of her motion to reconsider the court's earlier denial of leave to amend her complaint against Nationwide under Rules 60(b) and 59(e); (2) dismissal of her claims against Nationwide under Rule 12(b)(6); and (3) dismissal of her claims against Diallo and Traore for want of prosecution under Rule 41(b). She does not appeal the court's denial of her motion to reinstate. We address these issues in turn and conclude that, as stated earlier, the trial court acted within its allowed discretion.

[10] *See supra* note 4.

A. Motion to Reconsider (Nationwide)

On appeal, appellant contests the court's denial of her request for an extended opportunity to amend her complaint against Nationwide. She contends that she missed the deadline due to excusable neglect.[11] Her motion to reconsider cited Rule 59(e), but "[t]he nature of a motion is determined by the relief sought, not by its label or caption."[12] Rule 60(b) applies when "the movant is requesting consideration of additional circumstances."[13] In contrast, "if the movant is seeking relief from the adverse consequences of the original order on the basis of error of law, the motion is properly considered under Rule 59(e)."[14] Under either rule, the trial court has "broad discretion," and we review the denial of a motion for reconsideration for abuse of discretion.[15]

Here, the trial court appropriately considered appellant's excusable neglect argument under Rule 60(b).[16] Under Rule 60(b)(1), a court may relieve a party from a final judgment or order, as appellant claimed, for "excusable neglect." Our review of a trial court's ruling on a Rule 60(b) motion depends on the "peculiar facts and

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[11] In her motion to reconsider, appellant also argued that the trial court erred in ruling that her complaint failed to state a claim. However, her briefs before this court only challenge the trial court's conclusion on excusable neglect. Accordingly, we only address the excusable neglect argument. *See Bell Atl.-Wash., D.C., Inc. v. Pub. Serv. Comm'n of D.C.*, 767 A.2d 262, 265 n.5 (D.C. 2001) (concluding that a party forfeited an argument "by failing to include it in its main brief").

[12] *Wallace v. Warehouse Emps. Union No. 730*, 482 A.2d 801, 804 (D.C. 1984).

[13] *Id.*

[14] *Id.*

[15] *Dist. No. 1—Pac. Coast Dist. v. Travelers Cas. & Sur. Co.*, 782 A.2d 269, 278 (D.C. 2001) ("Motions under either rule [59(e) or 60(b)] are committed to the broad discretion of the trial judge.").

[16] *See Starling v. Jephunneh Lawrence & Assocs.*, 495 A.2d 1157, 1159-60 (D.C. 1985) (considering excusable neglect arguments under Rule 60(b)).

consider[s] particularly whether the moving party '(1) had actual notice of the proceedings; (2) acted in good faith; (3) took prompt action; and (4) presented an adequate defense.'"[17] Based on these factors and the record before us, the trial court did not abuse its discretion in denying appellant's motion.

Starting with "actual notice," appellant argues for excusable neglect by stressing that, because of her hearing difficulty, she had misunderstood the trial court's deadline for amending her complaint against Nationwide. She points to portions of the September 13, 2019 transcript in which she first expressed uncertainty about the difference between an amended complaint and a response to a motion to dismiss, and then sought clarification about the due dates for her various filings. A review of the transcript in context, however, illustrates that in both instances the court not only answered appellant's questions with explanations but also asked her to confirm her understanding of those explanations. Appellant then did so by saying "Okay" or "Yes, ma'am." Later in the hearing, she again affirmed her understanding that her amended complaint was due on September 27 and that her response to the motion to dismiss was due on October 4. Given these repeated confirmations that appellant knew the relevant dates, the "actual notice" factor weighs against our finding an abuse of discretion.[18]

The "good faith" and "prompt action" factors are closer calls but do not tip the scale toward an abuse of discretion. As to "good faith," appellant contends that her confusion about filing deadlines was genuine because she filed her response to Nationwide's motion to dismiss on the day the amended complaint was due and, in it, she had asked to amend her complaint. Although this filing reflects potential confusion, it conflicts with appellant's unequivocal, confirmatory responses when the court set the deadlines during the September 13 hearing discussed above. At best, the record is ambiguous as to her "good faith" in missing the deadline to file her amended complaint.

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[17] *McMillan v. Choice Healthcare Plan, Inc.*, 618 A.2d 664, 667 (D.C. 1992) (quoting *Starling*, 495 A.2d at 1159).

[18] Appellant's verbal confirmations of due dates during the hearing also undercut her argument that she was prejudiced because the court did not issue a written order stating the deadlines.

Next, with respect to "prompt action," appellant filed her motion for reconsideration 18 days after the court dismissed her complaint against Nationwide. While we cannot say that her motion was insufficiently prompt as a matter of law, we also cannot conclude that this filing delay of two-and-a-half weeks, when coupled with uncertain good faith in pursuing appellant's claim, nullified the trial court's broad discretion in denying the Rule 60(b) motion.[19]

The adequacy of appellant's motion to reconsider denial of her motion to amend the complaint, therefore, turns on whether she "presented an adequate defense" in her claimed hearing loss in the context of the September 13 hearing. Appellant did not establish that the court knew about her hearing loss before or during the September 13 hearing, nor that her hearing loss affected her understanding of the deadline for amending her complaint. It is true that, at the September 13 hearing, appellant once asked the court to repeat a date that she had not heard. However, this is the sole reference to her ability to hear before or during the hearing. Viewed in light of her earlier and later interactions with the court that day, this exchange does not establish that she had ever informed the court of her hearing loss, or that her hearing loss affected her understanding of the due dates. Indeed, before this exchange, appellant properly corrected the court on the date for filing the amended complaint, stating that the date was September 27, 2019, not September 21. Soon after this exchange, appellant again confirmed with the court, correctly, the due date of the amended complaint. These interactions establish that the court did not abuse its discretion in dismissing appellant's hearing-loss defense as a grounds for excusable neglect under Rule 60(b).

B. Motion to Dismiss Under Rule 12(b)(6) (Nationwide)

Appellant next argues that the court improperly dismissed her claims against Nationwide for failure to state a claim on which relief can be granted. At issue are her claims against Nationwide for breach of contract, bad faith, fraud, and negligence. We review the dismissal of claims under Rule 12(b)(6) de novo.[20] In this analysis, "we accept the allegations of the complaint as true, and construe all

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[19] *See Dist. No. 1*, 782 A.2d at 278; *cf. McMillan*, 618 A.2d at 668 (determining that the court did not abuse its discretion in denying a Rule 60(b) motion even though the movant took prompt action).

[20] *Grayson v. AT & T Corp.*, 15 A.3d 219, 228 (D.C. 2011) (en banc).

facts and inferences in favor of the plaintiff."[21] To survive a 12(b)(6) motion, a complaint must "contain a 'short and plain statement of the claim showing that the pleader is entitled to relief.'"[22] A complaint that "fails to allege the elements of a legally viable claim" will not survive.[23] We first assess appellant's breach of contract claim, and then turn to her tort claims of bad faith, fraud, and negligence.

1. Breach of Contract

The trial court did not err in dismissing appellant's breach of contract claim against Nationwide. To withstand a Rule 12(b)(6) motion to dismiss, a complainant's claim for breach of contract must "describe the terms of the alleged contract and the nature of the defendant's breach."[24] The claim here fails because it does not describe the terms of the contract that Nationwide allegedly breached. The complaint merely notes that Nationwide insured appellant and alleges that "Nationwide owed to Plaintiff a duty of care to investigate and settle her matter in a way that is most beneficial to Plaintiff." It does not specify any contractual term that established that duty. Moreover, nothing in the record establishes that Nationwide owed appellant a duty to investigate and settle insurance claims (the policy was not in evidence). Thus, we have no way of knowing, and have not been asked to take judicial notice of, the policy that Nationwide allegedly violated. We therefore affirm the dismissal of the breach of contract claim against Nationwide.

2. Tort Claims

Appellant's tort claims against Nationwide likewise cannot survive dismissal. When a case involves both a breach of contract claim and a tort claim, the tort claim

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[21] *Solers, Inc. v. Doe*, 977 A.2d 941, 947 (D.C. 2009) (quoting *In re Est. of Curseen*, 890 A.2d 191, 193 (D.C. 2006)).

[22] *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011) (quoting Super. Ct. Civ. R. 8(a)).

[23] *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007).

[24] *Francis v. Rehman*, 110 A.3d 615, 620 (D.C. 2015) (citing *Nattah v. Bush*, 605 F.3d 1052, 1058 (D.C. Cir. 2010)).

is viable only if the tort "exist[s] in its own right independent of the contract."[25] Thus, "any duty upon which the tort is based must flow from considerations other than the contractual relationship."[26] Here, appellant fails to establish how Nationwide's alleged torts of bad faith, fraud, and negligence flow from circumstances outside the contractual relationship. The complaint simply alleges that Nationwide owed appellant a duty and states that "Nationwide is guilty of bad faith . . . fraud, [and] negligence." It also alleges that "Nationwide has failed to adequately address Plaintiff['s] medical issues by suitably settling the matter." But the complaint's only hint to the parties' relationship is the allegation that Nationwide "insures the Plaintiff." This insurer-insured relationship is purely contractual[27] and nothing suggests that a different relationship between the parties exists from which these torts could inherently flow. Thus, appellant cannot show that her tort claims would stand "even if the contractual relationship did not exist."[28] Accordingly, we affirm the dismissal of appellant's bad faith, fraud, and negligence claims against Nationwide.[29]

C. Motion to Dismiss for Want of Prosecution (Diallo and Traore)

Finally, appellant argues that the Superior Court erred in dismissing her claims against Diallo and Traore without prejudice for want of prosecution after she missed a status hearing on February 20, 2020. We disagree and affirm the

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[25] *Choharis v. State Farm Fire & Cas. Co.*, 961 A.2d 1080, 1089 (D.C. 2008).

[26] *Id.*

[27] *See id.* at 1087 ("An insurance policy establishes a contractual relationship between the company and its policy holder.").

[28] *Id.* at 1089.

[29] In appellant's opposition to Nationwide's 12(b)(6) motion, her motion for reconsideration, and her brief to this court, she argues that Nationwide breached "its implied contractual agreement of good faith and fair dealing." However, this claim does not appear in her complaint, and "[t]he only issue on review of a dismissal made pursuant to Rule 12(b)(6) is the legal sufficiency of the *complaint*," not later filings. *Grayson*, 15 A.3d at 228-29 (emphasis added) (quoting *Murray v. Wells Fargo Home Mortg.*, 953 A.2d 308, 316 (D.C. 2008)).

dismissal. Rule 41(b) empowers the Superior Court to, "on its own initiative, enter an order dismissing the action or any claim" when "the plaintiff fails to prosecute."[30] Dismissing a case for failure to prosecute "is a sanction that should be used with caution."[31] Even so, such a dismissal "generally rests within the broad discretion of the trial judge, to be disturbed only in case of obvious abuse."[32] Here, the trial court did not obviously abuse its discretion in dismissing the case without prejudice under Rule 41(b).

Appellant posits that dismissal was erroneous because she provided evidence of a medical excuse, "prosecuted her claims diligently before the trial court in all aspects," and would be prejudiced by dismissal because the statute of limitations has run on her claims. The trial court's review of these issues, plus its assessment of the prejudice to Diallo and Traore and its consideration of the previous sanctions of record, demonstrate that dismissal for want of prosecution was not an abuse of discretion.

In considering "the nature of the party's conduct" when dismissing for want of prosecution,[33] the trial court adequately explained why appellant's doctor's note, coupled with her conduct before the hearing, was insufficient to avoid dismissal. The note failed to "provide medical reasons that would explain" appellant's absence. Moreover, the court questioned the doctor's "ability to offer a first-hand medical observation on Plaintiff's condition on February 21, 2020" because the note was signed on March 2, ten days after the hearing and eight days after the illness abated. As to appellant's conduct, the court highlighted that she had not contacted chambers in the days before the hearing to inform the court of her illness despite the fact that, according to the doctor's note, the illness had commenced days before the hearing. Nor did appellant explain why she had not answered the court's repeated phone calls during the status hearing. This detailed assessment of the circumstances surrounding the hearing weighs substantially against finding an abuse of discretion.

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[30] Super. Ct. Civ. R. 41(b)(1)(A)(ii).

[31] *Dobbs v. Providence Hosp.*, 736 A.2d 216, 220 (D.C. 1999).

[32] *Id.* at 219 (internal quotation marks omitted).

[33] *Id.* at 220 (quoting *District of Columbia v. Serafin*, 617 A.2d 516, 519 (D.C. 1992)).

Another relevant factor in the Rule 41(b) analysis is "evidence of a pattern of dilatory . . . conduct."[34] For example, in *Dobbs v. Providence Hospital*, dismissal with prejudice was not an abuse of discretion because the plaintiff failed to have an expert available to testify after three previous transgressions had already delayed the case.[35] Here, although appellant argues that she "prosecuted her claims diligently before the trial court in all aspects," the court emphasized that this case had a three-year history of delay. In dismissing the case at the February 21 hearing, the court recalled appellant's two prior failures to appear which had led to dismissals for want of prosecution in January 2018 and March 2019. The court's order declining to reinstate the case also recognized that appellant had missed the deadline to file an amended complaint and had received leave too late file a different document.[36] The case was filed in 2017 but by 2020 had not advanced beyond the motion to dismiss stage. As in *Dobbs*, this pattern of dilatory conduct illustrates that the court's Rule 41(b) dismissal fell within its discretion.

Appellant correctly observes that the statute of limitations has run on her claims and thus that she cannot not refile her complaint against Diallo and Traore.[37] But a remedy remains. The court denied her motion to reinstate without prejudice. An avenue is thus still available for her to bolster her explanation for missing the February 21 status hearing by filing a Rule 60(b) motion for reconsideration.[38] After all, as the order denying appellant's motion to reinstate explained: "The Court does not mean to say that it is impossible for Plaintiff to show good cause, merely that

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[34] *Id.*

[35] *See id.* at 222 (recounting Dobbs's earlier dilatory conduct).

[36] Order Den. Without Prejudice Pl.'s Mot. Reinst. Case 3.

[37] *See Stewart-Veal v. District of Columbia*, 896 A.2d 232, 237 (D.C. 2006) ("[O]nce a suit is dismissed, even if without prejudice, 'the tolling effect of the filing of the suit is wiped out and the statute of limitations is deemed to have continued running from whenever the cause of action accrued, without interruption by that filing.'" (quoting *Ciralsky v. C.I.A.*, 355 F.3d 661, 672 (D.C. Cir. 2004))).

[38] *See Wagshal v. Rigler*, 711 A.2d 112, 117 (D.C. 1998) (recognizing that a litigant can use a Rule 60(b) motion to challenge a Rule 41(b) dismissal).

Plaintiff has not done so on the facts before the Court."[39] Providing additional context for her medical excuse and addressing the court's related concerns conceivably might keep appellant's case against Diallo and Traore alive.

A further consideration that counsels against finding an abuse of discretion is the prejudice to other parties from appellant's actions;[40] her absence at the status hearing prejudiced Diallo and Traore. Although Diallo also missed the hearing,[41] the prejudice to Diallo and Traore went beyond the time lost waiting for appellant to show up. Continuing the case would prolong three years of litigation against pro se defendants who require an interpreter's assistance at the hearings. Furthermore, "even where little or no prejudice results to a particular defendant, dismissal may in appropriate circumstances be justified"—namely, when the delay prejudices "other participants in the court system as a whole."[42] After all, "[n]oncompliance with court orders and rules may cause the system to bog down and may adversely affect other litigants."[43] A pattern of delay, therefore, as in this case, "prejudice[s] 'not only the defendant[s] but also the ability of other persons—persons that are doing what is necessary to follow the rules—to utilize the system.'"[44] This prejudice adds to the reasons that dismissal was within the court's sound discretion.

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[39] Order Den. Without Prejudice Pl.'s Mot. Reinst. Case 5.

[40] *See Dobbs*, 736 A.2d at 221 (analyzing "prejudice to the immediate parties" and "other participants in the court system as a whole" within the Rule 41(b) analysis) (quoting *Van Man v. District of Columbia*, 663 A.2d 1245, 1247 (D.C. 1995))).

[41] The court credited testimony that Diallo was on her way to the status hearing when the court ended it due to appellant's absence.

[42] *Van Man*, 663 A.2d at 1247.

[43] *Id.* (quoting *Chapman v. Norwind*, 653 A.2d 383, 387 n.5 (D.C. 1995)).

[44] *Dobbs*, 736 A.2d at 221 (quoting *Perry v. Sera*, 623 A.2d 1210, 1219 (D.C. 1993)).

Finally, dismissing a case under Rule 41(b) calls for considering lesser sanctions.[45] A trial court, however, need not "explicitly discuss alternative sanctions" when dismissing a case if it has already employed sanctions for "earlier dilatory conduct."[46] Here, the trial court previously sanctioned appellant for delays, seemingly with limited deterrent effect. As discussed above, the case was twice dismissed without prejudice for want of prosecuting Diallo and Traore, and appellant's claims against Nationwide were dismissed after she missed the deadline to file an amended complaint.[47] Delay has remained an issue. Moreover, "dismissal without prejudice is itself a lesser sanction."[48] Accordingly, the court did not abuse its discretion in dismissing appellant's case against Diallo and Traore for want of prosecution.

II. Conclusion

For the foregoing reasons, we affirm the trial court's rulings.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO
Clerk of the Court

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[45] *Id.* at 220 ("In exercising its discretion under the rule, the trial court should consider first other lesser sanctions." (quoting *Serafin*, 617 A.2d at 519)).

[46] *Id.* at 222.

[47] *See supra* text accompanying note 36.

[48] *Van Man*, 663 A.2d at 1248.

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DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 20-CV-0269

ANDRIA DODWELL-WRIGHT,

Appellant,

v. **2017-CA-003534-B**

NATIONWIDE INSURANCE COMPANY, *et al.*,

Appellees.

BEFORE: Blackburne-Rigsby, Chief Judge,* and Beckwith, Easterly, McLeese, Deahl, Howard, AliKhan* and Shanker, Associate Judges; Washington,* Senior Judge.

ORDER

On consideration of appellant's petition for rehearing or rehearing en banc, and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

ORDERED by the merits division* that appellant's petition for rehearing is denied. It is

FURTHER ORDERED that appellant's petition for rehearing en banc is denied.

PER CURIAM

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