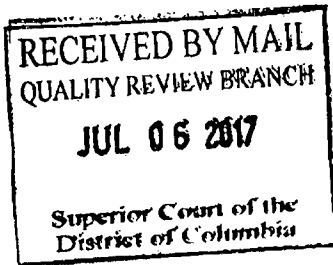


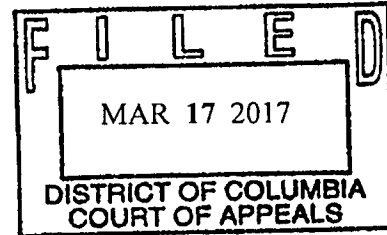
DISTRICT OF COLUMBIA COURT OF APPEALS



No. 15-CV-1089

KHADIJA DUMA, APPELLANT,

v.



WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, APPELLEE.

Appeal from the Superior Court of the
District of Columbia
(CB-7570-12)

(Hon. Stuart Nash, Trial Judge)

(Submitted January 18, 2017)

Decided March 17, 2017)

Before BLACKBURN-RIGSBY and EASTERLY, *Associate Judges*, and RUIZ,
Senior Judge.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: *Pro se* appellant Khadija Duma filed a negligence action against appellee Washington Metropolitan Area Transit Authority ("WMATA") for a slip and fall that she suffered while riding one of WMATA's Metro station escalators. The trial court granted summary judgment in favor of WMATA and Ms. Duma appeals the trial court's decision. We affirm.

I.

Ms. Duma filed a complaint against WMATA alleging that she was entitled to \$60,000.00 in damages for injuries, due to a fall that she suffered while riding on an escalator at Stadium Armory Metro Station. Judge Anthony C. Epstein dismissed her complaint for failure to "materially" respond to WMATA's requested discovery, "particularly with respect to medical records and preexisting conditions." Ms. Duma appealed Judge Epstein's decision and this court in an MOJ, *Duma v. Wash. Metro. Area Transit Auth.*, No. 13-CV-553, Mem. Op. & J. (D.C. Sept. 25, 2014), found that Ms. Duma's discovery noncompliance was neither willful nor prejudicial to WMATA and accordingly reversed the trial

court's dismissal and remanded to afford Ms. Duma "one last clear opportunity to provide discovery materials WMATA had requested."

On remand, Ms. Duma's case was reassigned to Judge Nash who set out a new discovery schedule. WMATA again requested documents from Ms. Duma relating to her preexisting health conditions, which she had claimed were aggravated by her fall. And Ms. Duma again failed to respond to WMATA's requests for both her medical records regarding her preexisting injuries and for the name of an expert witness who could testify to the injuries she sustained from the fall and the fall's impact on her preexisting medical condition. WMATA subsequently filed a motion to compel, which the trial court granted, and "reminded [Ms. Duma] that failure to participate in the discovery process may result in sanctions against her" including "[a]n order . . . dismissing the action or any proceeding or part thereof, or rendering a judgment by default against the disobedient party." Sup. Ct. Civ. R. 37(b)(2)(C). When Ms. Duma failed again to respond, WMATA filed two motions to dismiss, one on April 20, 2015, for Ms. Duma's failure to cooperate with the discovery process and the other on June 2, 2015, "for *pro se* Plaintiff's failure to identify a medical expert on issues of causation, aggravation of pre-existing condition(s) and permanence." Ultimately finding WMATA's second motion to dismiss compelling, the trial court granted summary judgment¹ to WMATA for Ms. Duma's failure to provide an expert witness. This appeal followed.

II.

Ms. Duma argues on appeal that she did not comply with WMATA's discovery requests because she (1) had privacy concerns regarding her medical records, (2) believed that WMATA had been conducting surveillance of her,² and (3) found WMATA's discovery requests to be "unreasonable," "overbroad and overvague." Ms. Duma's claims do not merit relief. On appeal from a grant of summary judgment, "we review the record *de novo* in determining whether summary judgment was properly granted by the trial court." *In re Burleson*, 738

¹ Because the case was in the discovery phase, the trial court treated defendant's motion to dismiss as a motion for summary judgment.

² Ms. Duma specifically alleges that WMATA has: (1) used private citizens, particularly Ms. Duma's neighbor, (2) and metro "'riders' to track [her] on the subway and buses," (3) and that WMATA has unlawfully accessed her medical records.

A.2d 1199, 1203-04 (D.C. 1999) (internal citations omitted). “Summary judgment is appropriate where the facts submitted to the trial court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Osbourne v. Capital City Mortg. Corp.*, 667 A.2d 1321, 1324 (D.C. 1995) (internal citation and quotation marks omitted).

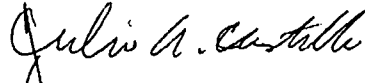
To recover in a personal injury case involving a preexisting condition, the moving party must present expert testimony so the factfinder is able to determine causation. *Baltimore v. B.F. Goodrich Co.*, 545 A.2d 1228, 1231 (D.C. 1988). These types of cases, which involve “multiple and/or preexisting causes” are considered “medically complicated” because the plaintiff’s injury is potentially traceable to many sources. *See id.* “To allow a jury of laymen, unskilled in medical science, to [trace the injuries in such circumstances] would permit the rankest kind of guesswork, speculation and conjecture.” *Id.* (quotation marks and internal citation omitted).

Ms. Duma alleges her fall on WMATA’s metro station escalator aggravated her preexisting medical conditions of back, neck, and spinal cord pain, which she asserts that she has suffered since at least 2003. Further, the record reflects a previous lawsuit in Maryland where Ms. Duma “sought damages for severe and permanent injuries she suffered as a result of a car accident” and Ms. Duma also represented to the trial court “that she was totally disabled and receiving social security benefits.” Because Ms. Duma claimed her fall aggravated her preexisting back injury, she was required to introduce expert testimony. *See, e.g., Structural Pres. Sys., Inc. v. Petty*, 927 A.2d 1069, 1076 (D.C. 2007) (finding it to be a “medically complicated issue” to determine whether a laborer, with a “pre-existing hip injury,” could attribute his back pain to a subsequent “trip-and-fall accident,” to his preexisting injury, or to both); *Gray Line, Inc. v. Keaton*, 428 A.2d 360, 362 (D.C. 1981) (holding the jury improperly considered the issue of causation in a bus driver’s personal injury case where the bus driver was involved in four automobile accidents in a two-year span and did not present expert medical testimony that the particular collision at issue directly caused the injury to her back).

Absent expert medical testimony, there was no evidence to conclude how the fall exacerbated Ms. Duma’s preexisting back condition or if it had any impact at all. In failing to identify an expert witness, Ms. Duma cannot establish causation with respect to her claim of negligence, and thus summary judgment was appropriate. *Osbourne, supra*, 667 A.2d at 1324.

Accordingly, the judgment on appeal is hereby affirmed.

ENTERED BY DIRECTION OF THE COURT:

A handwritten signature in cursive script, appearing to read "Julio A. Castillo".

JULIO A. CASTILLO
Clerk of the Court

Copies to:

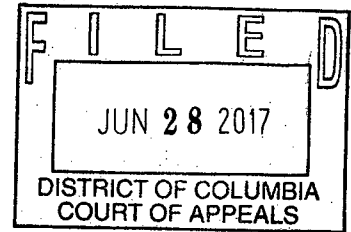
Honorable Stuart Nash

Director, Civil Division

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**District of Columbia
Court of Appeals**



No. 15-CV-1089

KHADIJA DUMA,

Appellant,

CAB7570-12

v.

**WASHINGTON METROPOLITAN
AREA TRANSIT AUTHORITY,**

Appellee.

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

ORDER

On consideration of appellant's petition for rehearing or rehearing *en banc*, it is

ORDERED by the merits division* that the petition for rehearing is 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

**Chief Judge Blackburne-Rigsby was an Associate Judge of the court at the time of argument. Her status changed to Chief Judge on March 18, 2017.

Copies to:

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**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

KHADIJA DUMA

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

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Case No. 2012 CA 007570 B

ORDER

On April 23, 2013, defendant Washington Metropolitan Area Transit Authority (“WMATA”) filed a motion to dismiss because plaintiff Khadija Duma has not provided any of the discovery that the Court ordered her to provide by April 19, 2013, nor did she file her witness list or Rule 26(b)(4) statement by the deadlines established in the March 29, 2013 Order. On April 30, 2013, the Court denied Ms. Duma’s motion to enlarge the discovery period, as well as her motion for recusal. The Court mailed the April 30 Order to both addresses that Ms. Duma has provided.

On May 13, Ms. Duma filed two documents – a request for the status of this case and a supplement to that request. In these submissions, Ms. Duma does not contend that she has provided the discovery to which WMATA is entitled and that the Court ordered her to provide, or the witness list and Rule 26(b)(4) statement on a timely basis. Instead, she complains again that the Court is biased against her and that the Court and Fannie Mae have sent documents to the address that is not her preferred address.

In deciding what sanction under Rule 37 is appropriate for a discovery violation, the Court must consider the totality of the circumstances, including “prejudice caused by delay to the overall administration of justice” and the “strong preference for a decision on the merits.” *Abell v. Wang*, 697 A.2d 796, 801 (D.C. 1997); *see Lyons v. Jordan*, 524 A.2d 1199, 1201 (D.C. 1987)

(court should consider the nature of the noncompliance, prejudice to the moving party, less harmful sanctions, and the societal preference for a decision on the merits). “[T]he decision to impose discovery sanctions is left to the ‘broad discretion’ of the trial court.” *Lyons*, 524, A.2d at 1201. However, “[w]hen a party moves for dismissal of the complaint under Rule 37, the court will abuse its discretion in granting the motion unless there are severe circumstances,” and “[t]wo factors dictate whether ‘severe circumstances’ are present: (1) prejudice to the party who has not received the discovery sought, and (2) the extent to which the default was willful.” *Abell*, 697 A.2d at 801 (internal quotation and citation omitted).

Here, Ms. Duma’s responses to WMATA’s discovery requests are long past due, and she has not provided even partial responses. Ms. Duma brought this case, and by doing so, she assumed certain responsibilities, including responding to discovery requests. Ms. Duma provides no valid justification or excuse for her failure to comply with her obligations as a litigant, and her complaints about service of motions and orders are unfounded and in any event unrelated to her breaches of her obligations. Most plaintiffs want an expeditious resolution of their claims, but Ms. Duma has resisted complying with the deadlines in the January 4, 2013 Scheduling Order to which she agreed and sought delays for no valid reason. The Court’s March 29 Order denying the stay pending appeal actually benefitted Ms. Duma by preventing further delay, particularly because the Court of Appeals ended up dismissing the appeal for lack of jurisdiction. Although Ms. Duma represents herself, her prior case against Fannie Mae in federal court gave her experience with the process. The only reasonable inference is that Ms. Duma’s failure to respond is willful, especially since she has not used her opportunity to provide an alternative explanation in response to WMATA’s motion to dismiss.

(court should consider the nature of the noncompliance, prejudice to the moving party, less harmful sanctions, and the societal preference for a decision on the merits). “[T]he decision to impose discovery sanctions is left to the ‘broad discretion’ of the trial court.” *Lyons*, 524, A.2d at 1201. However, “[w]hen a party moves for dismissal of the complaint under Rule 37, the court will abuse its discretion in granting the motion unless there are severe circumstances,” and “[t]wo factors dictate whether ‘severe circumstances’ are present: (1) prejudice to the party who has not received the discovery sought, and (2) the extent to which the default was willful.” *Abell*, 697 A.2d at 801 (internal quotation and citation omitted).

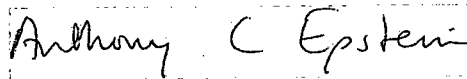
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WMATA is prejudiced by Ms. Duma's failure to provide any discovery at all, which impedes its ability to prepare for trial and exposes it to unfair surprise at trial, and discovery is now closed. Moreover, with Ms. Duma's complete, continuing, and willful failure to respond, the Court is unable to fashion a less severe sanction that protects WMATA's legitimate interests. For example, the Court has no reason to expect Ms. Duma to respond to another order to provide responses in the future, particularly because she did not comply with her discovery obligations after WMATA filed its motion. Even if Ms. Duma eventually complied, WMATA would still be prejudiced by the delay due only to Ms. Duma's default. Finally, complete non-compliance with discovery obligations by any party prejudices the overall administration of justice and undermines the Court's ability to manage cases in an efficient and timely manner. *See French v. Levitt*, 997 A.2d 701, 703 (D.C. 2010) ("the more rigorous and formal track on which civil cases are now placed allows the trial court to accord greater weight than previously allowed for prejudice caused by delay to the overall administration of justice.") (internal quotations, brackets, and citation omitted).

Ms. Duma does not explain why she thinks a status hearing would be worthwhile, and the Court can think of none.

For these reasons, the Court orders that:

1. Ms. Duma's request for a status hearing is denied.
2. The case is dismissed.



Anthony C. Epstein
Judge
Signed In Chambers

Dated: May 22, 2013

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Counsel for WMATA

Docketed on May 22, 2013

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

KHADIJA DUMA

v.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

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Case No. 2012 CA 007570 B

ORDER

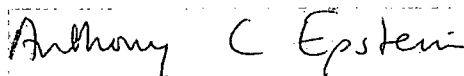
On June 17, 2013, plaintiff Khadija Duma filed a motion for clarification or correction of the Court's May 22, 2013 Order dismissing the case. On June 25, defendant Washington Metropolitan Area Transit Authority ("WMATA") filed an opposition.

On May 29, 2013, Ms. Duma filed a notice of appeal from the May 22 Order. As the Court explained in its March 29 Order, "In general, the filing of a timely notice of appeal immediately transfers jurisdiction of all matters relating to the appeal from the trial court to the appellate court." *In re S.C.M.*, 653 A.2d 398, 402 (D.C. 1995) (citations omitted). While an appeal of an order is pending, the Court may decide only matters "which do not result in revocation or alteration of the [order] on appeal." *Araya v. Keleta*, 2013 D.C. App. LEXIS 77, at *47-48 (D.C. March 21, 2013) (internal quotations and citation omitted).

Therefore, to the extent that Ms. Duma is asking the Court to make any substantive changes in its May 22 Order, the Court lacks jurisdiction to grant the request. However, although the Court cannot enter a ruling that would have the effect of altering the order on appeal, it has intermediate authority to consider the merits of the motion and indicate whether it would grant relief if the case were returned to it. *See District of Columbia v. Fraternal Order of Police Metropolitan Police Labor Committee*, 33 A.3d 332, 335 & n.8 (D.C. 2011).

The Court exercises this intermediate authority and indicates that, if it had the jurisdiction to do so, it would grant Ms. Duma's request to the following extent. The Court was not correct when it stated broadly that Ms. Duma "has not provided even partial responses" to WMATA's discovery requests. *See* May 22 Order at 2. In fact, she did provide partial discovery responses, which WMATA attached as Exhibit 3 to its March 21 reply to Ms. Duma's motion for a stay. However, as WMATA argued in its May 17 supplemental motion to dismiss, her responses were materially incomplete, particularly with respect to medical records and preexisting conditions, and Ms. Duma still does not dispute WMATA's representation that she did not sign a HIPPA-compliant authorization so that WMATA could obtain medical records from her medical provider consistent with federal law. *See* WMATA Motion at 2 ¶¶ 5-6. Considering the totality of the circumstances, the Court still believes that dismissal is an appropriate sanction for Ms. Duma's willful and unjustified failure to cooperate with WMATA's reasonable and important discovery requests, and that no less severe sanction would protect WMATA's legitimate interests or address the prejudice to the overall administration of justice and the Court's ability to manage cases in an efficient and timely manner. *See generally* May 22 Order at 1-3.

The Court need not clarify its statements concerning Ms. Duma's mailing address or her prior case in federal court. Ms. Duma also provides no reason for the Court to reconsider its assessment of her allegations of judicial bias.



Anthony C. Epstein
Judge
Signed In Chambers

Dated: July 3, 2013

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Docketed on July 3, 2013

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