

No. _____

In the Supreme Court of the United States

NELDA FINK,

Petitioner,

v.

PEVCO SYSTEMS INTERNATIONAL, INC., ET AL.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE APPELLATE COURT OF MARYLAND

APPENDIX

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Appendix A
UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 28

September Term, 2025

NELDA FINK

v.

PEVCO SYSTEMS
INTERNATIONAL, INC., *et al.*

Wells, C.J.,
Graeff,
Berger,

JJ.

PER CURIAM

Filed: January 2, 2026

Appellant Nelda Fink appeals from an order by the Circuit Court for Baltimore County dismissing her complaint against appellees Pevco Systems International, Inc, and Lauren Upton, Esq.. On appeal, Fink presents six questions for our review, which we reduce to two and rephrase as:

* This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

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1. Did the circuit court err in dismissing the complaint for failure to state a claim?
2. Did the circuit court abuse its discretion in denying leave to amend?

For the reasons below, we shall affirm.

BACKGROUND

Because this is an appeal from the granting of a motion to dismiss, the “universe of facts” relevant to our analysis is “limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.” *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (2010) (cleaned up). We set forth those facts—which we must assume are true—in the light most favorable to Fink. *See id.*

Fink began working for Pevco in September 2009. During the COVID-19 pandemic, Pevco implemented an indoor mask policy that did not allow any exceptions. In early 2020, Fink and Pevco reached a “verbal agreement” that she “would continue working from [Pevco’s] Baltimore County office during the state of emergency.” At some point, Pevco “coerced” Fink “to obtain detailed medical information with the threat of employment termination if not provided[.]”

In April 2021, Pevco directed Fink to work remotely. Fink was concerned with her productivity level, so, the next month, she requested to return to the office. On May 12, 2021, Pevco terminated her employment. Fink then applied for unemployment benefits, which Pevco contested. Although her claim was denied at first—which the Circuit Court for Anne Arundel County affirmed—this Court ultimately reversed that decision. *See In the Matter of Nelda Fink*, No. 1604, Sept. Term, 2022 (filed Oct. 10, 2023) (unreported).

Upton represented Pevco during those judicial proceedings.

In April 2024, Fink sued Pevco and Upton, alleging four counts of wrongful termination and one count of abuse of process. Upton moved to dismiss for failure to state a claim, but the circuit court, instead, granted Fink leave to amend. Fink filed her First Amended Complaint in July 2024, in which she amended only the abuse-of-process count by adding additional facts about Upton's representation of Pevco; she did not change anything else. Upton again moved to dismiss for failure to state a claim, and Pevco soon did so as well. But, instead, the circuit court again granted Fink leave to amend.

Fink filed her Second Amended Complaint in October 2024, alleging fewer facts than either previous version. Again, Upton and Pevco separately moved to dismiss. This time, however, the court denied Fink leave to amend because "[t]he proposed [a]mendment w[ould] cause a further delay without addressing the substantive grounds in support of" Upton's and Pevco's motions. Even so, Fink orally renewed her request for leave to amend at the hearing on Upton's and Pevco's motions in December 2024. The court held the matter *sub curia*, but it ultimately denied Fink leave to amend and dismissed her complaint for failure to state a claim. Fink moved for reconsideration, which was denied, and then timely appealed.

DISCUSSION

I. Dismissal

We review the granting of a motion to dismiss to determine whether the circuit court's decision was legally correct. See *Tavakoli-Nouri v. State*, 139 Md.

App. 716, 725 (2001). In doing so, "we view the well-pleaded facts of the complaint in the light most favorable to the appellant[.]" *Id.* (cleaned up). To survive dismissal, the complaint must plead the material facts "with sufficient specificity. Bald assertions and conclusory statements by the pleader will not suffice." *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000) (cleaned up). Thus, we will affirm a dismissal "if the complaint does not disclose, on its face, a legally sufficient cause of action." *Rossaki v. NUS Corp.*, 116 Md. App. 11, 18 (1997) (cleaned up).

A. *Wrongful Discharge*

To adequately plead a claim of wrongful discharge, a complaint must allege: (1) that the employee was discharged; (2) that the discharge "violat[ed] some clear mandate of public policy"; and (3) that there is a "nexus between the employee's conduct and the employer's decision to fire the employee." *Wholey v. Sears Roebuck*, 370 Md. 38, 50-51 (2002). This case concerns only the second element. To plead this element, the employee must identify "the policy in question with clarity, specificity, and authority." *Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 495 (1995).

The operative complaint here failed to identify any clear mandate of public policy or plead facts sufficient to show that Pevco violated such policy. *Count One* alleged that Pevco violated emergency executive orders concerning indoor mask mandates by failing to provide for a required exception. But the complaint fails to identify any specific executive order or any applicable exception, and it fails to state any facts explaining how Pevco's policy violated the unidentified order.

Count Two alleged that “Pevco violated the OSHA General Duty Clause by failing to provide a workplace free from recognized hazards, as evidenced by their improper enforcement of the indoor mask policy.” See 29 U.S.C.A. § 654(a)(1). To be sure, OSHA’s General Duty Clause could conceivably qualify as a public policy mandate. See *Bleich v. Florence Crittenton Servs. of Balt., Inc.*, 98 Md. App. 123, 134 (1993). But the complaint does not offer any facts showing how Pevco’s indoor masking policy—implemented during a global pandemic—created a workplace hazard that “caus[ed] or [was] likely to cause death or serious physical harm to [its] employees[.]” 29 U.S.C.A. § 654(a)(1).

Count Three alleged that Pevco “violated Maryland Medical Privacy Laws by coercing [Fink] into disclosing protected medical information under the threat of termination.” Even if the authorities cited in the complaint¹ qualified as public policy mandates, employers are not *per se* prohibited from seeking medical information from an employee. Cf. *Tarquinio v. Johns Hopkins Univ. Applied Physics Lab*, Civil Action No. 23-0727, 2024 WL 1604493, at *5 (D. Md. Apr. 11,

¹ The complaint cites to the Maryland Medical Records Act (Md. Code Ann., Health-Gen. §§ 4-301-4-310) and Maryland’s general anti-discrimination statute (Md. Code Ann., State Gov’t § 20-602). We note that it is unlikely either of these statutes could support a claim of wrongful discharge because the tort “is inapplicable where the public policy sought to be vindicated . . . is expressed in a statute which carries its own remedy for violation of that public policy.” *Wholey*, 370 Md. at 52 (citing *Makovi v. Sherwin-Williams Co.*, 316 Md. 603, 609 (1989)). The Medical Records Act provides a remedy in § 4-309, and Maryland and federal anti-discrimination laws, likewise, provide remedies, see *Makovi*, 316 Md. at 609.

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2024) (holding that employer did not violate the Americans with Disabilities Act by seeking medical information from employee to determine whether requested exemption from COVID vaccination policy should be granted as a reasonable accommodation), *aff'd*, 141 F.4th 568 (4th. Cir.), *cert. denied*, -- S. Ct. --, 2025 WL 3131850 (Mem.) (2025). And, here, the complaint does not state any facts establishing what information Pevco requested or why it requested that information or how the request violated any public policy mandates.

Finally, *Count Four* alleged that, by ordering her to work remotely, Pevco breached a verbal agreement with Fink that she "would work from the Baltimore office during the state of emergency." To allege a breach of contract, a complaint "must of necessity allege with certainty and definiteness facts showing a contractual obligation owed by the defendant to the plaintiff and a breach of that obligation by defendant." *RRC Ne.*, 413 Md. at 655 (cleaned up). The complaint here states in conclusory fashion that the parties' agreed that Fink would work from the Baltimore office, but it does not allege an explicit or implicit promise by Pevco to be bound by that agreement or that Fink provided any new or additional consideration in exchange. *See id.* at 658.

In sum, Counts One through Four of the Second Amended Complaint contained nothing more than bald assertions and conclusory statements that Pevco had violated public policies or breached an alleged contract. There were no facts alleged sufficient to state any claim for wrongful discharge, and the circuit court, therefore, did not err in dismissing these counts.

B. Abuse of Process

To adequately plead a claim of wrongful discharge, a complaint must allege: (1) “that the defendant willfully used process, such as a subpoena or a protective order, after it has issued in a manner not contemplated by law”; (2) “that the defendant acted to satisfy an ulterior motive”; and (3) “that damages resulted from the defendant’s perverted use of process.” *Charles v. Charles*, 265 Md. App. 631, 649 (cleaned up), *cert. denied sub nom., Charles v. Summerfield*, 2025 WL 3177363 (Table) (filed Oct. 27, 2025). “The mere issuance of process itself . . . is not actionable, even if it is done with an ulterior motive or bad intention.” *Campbell v. Lake Hollowell Homeowners Assoc.*, 157 Md. App. 504, 530 (2004) (cleaned up). Instead, the complaint must allege “some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process[.]” *Id.* (cleaned up).

The complaint here alleged that “Pevco engaged in bad faith legal actions, through appealing [Fink’s] approved Unemployment Benefits without merit[]” and that “[a]fter the bad faith legal process had initiated (issued), [] Upton joined [] Pevco and together continued the bad faith meritless process.” Even if Pevco’s administrative appeal challenging Fink’s unemployment benefits constituted “process,” see Md. Rule 1-202(y), the complaint does not state any facts showing that it was anything other than the regular use of process. Likewise, the complaint does not allege any definite act or threat by Pevco or Upton not authorized by the process. It contained only bald allegations and conclusory statements insufficient to state a claim for

abuse of process. Thus, the circuit court did not err in dismissing this count.

II. Leave to Amend

We review the denial of a request for leave to amend for abuse of discretion, *see Higginbotham v. Pub. Serv. Comm'n of Md.*, 171 Md. App. 254, 275-76 (2006), mindful "that leave to amend complaints should be granted freely . . . and that it is the rare situation in which a court should not grant leave to amend[.]" *RRC No.*, 413 Md. at 673. *See also* Maryland Rule 2-341(c). That said, leave to amend should not be allowed if it would cause prejudice to the opposing party or undue delay, or if a claim is irreparably flawed such that an amendment would be futile. *Id.* at 673-74.

The record here shows that Fink was given multiple opportunities to remedy the deficiencies in her complaint—each time Upton or Pevco moved to dismiss, Fink moved for, and was granted, leave to amend. Yet she still failed to allege any facts sufficient to state a claim for relief. Indeed, the Second Amended Complaint, which was Fink's third pleading attempt, alleged fewer facts than either of the previous versions of her complaint. The circuit court recognized that allowing Fink to keep trying to fix the pleading defects would prejudice Upton and Pevco and cause undue delay. Consequently, it did not abuse its discretion in denying Fink leave to amend.

**JUDGMENT OF THE
CIRCUIT COURT FOR
BALTIMORE COUNTY
AFFIRMED. COSTS TO
BE PAID BY APPEL-
LANT.**

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Appendix B

[Filed: Dec. 31, 2024]

NELDA FINK	*	IN THE
Plaintiff	*	CIRCUIT COURT
VS	*	FOR
PEVCO SYSTEMS	*	BALTIMORE COUN-
INTERN'L, INC, et al.	*	TY
Defendant	*	CASE NO.: C-03-CV-
	*	24-001408
* * * * *	*	* * * * *

ORDER

This matter came before the Court on Defendant Pevco and Defendant Upton's Motions to Dismiss the Second Amended Complaint. The Court heard argument of the parties on December 27, 2024 and had an opportunity to review the pleadings filed with the Court. After review and argument, the Court rules as follows:

As a preliminary matter, the Court denies the Plaintiff's request for leave to file a third amended complaint. The Court notes that the current complaint is the Plaintiff's third attempt at resolving any factual issues necessary to allow her complaint to proceed (after having filed the original complaint and the first amended complaint). The Court further notes that the Plaintiff filed a request for leave to file a third amended complaint which was denied on November 26, 2024. When Plaintiff provided argument to the Court on December 27, 2024, briefly addressing the denial of the request for leave to file a third amended complaint, Plaintiff advised the Court that the third amended complaint that she now wished to provide would not be the same amended complaint which was

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previously denied on November 26, 2024. This request would be the fifth occasion on which the Plaintiff will have attempted to resolve factual defects in the original pleading. This process of continuing to amend the complaint would never permit this matter to proceed, much less come to a conclusion. As such, the request for leave to amend the complaint is DENIED.

Upon consideration of Defendant Lauren Upton's Motion to Dismiss, or, in the alternative, for Summary Judgment, and having considered the Plaintiffs response and arguments thereto, it is this 30th day of December, by the Circuit Court for Baltimore County, hereby ORDERED that Defendant Upton's Motion is GRANTED; and it is further ORDERED that all claims against Defendant Upton are Dismissed with Prejudice.

Having considered Defendant Pevco Systems International, Inc.'s Motion to Dismiss, and Plaintiffs response and arguments thereto, it is this 30th day of December, 2024, hereby ORDERED, that Defendant's Motion be and is hereby GRANTED. It is further ORDERED that Plaintiffs Second Amended Complaint is hereby Dismissed with Prejudice.

/s/ James L. Rhodes 12/30/2024
JUDGE OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY

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Appendix C

[Filed: Mar. 5, 2025]

NELDA FINK	*	IN THE
Plaintiff	*	CIRCUIT COURT
VS	*	FOR
PEVCO SYSTEMS	*	BALTIMORE COUN-
INTERN'L, INC, et al.	*	TY
Defendant	*	CASE NO.: C-03-CV-
	*	24-001408
* * * * *	*	* * * * *

**ORDER ON PLAINTIFF'S MOTION TO ALTER
OR AMEND**

The Plaintiff has filed a Motion to Alter or Amend. This court has reviewed the pleadings and the record and rules as follows:

*As to Count 1 (Wrongful Termination as against
Public Policy)*

According to Maryland law, there is a public policy exception to the at-will employment rule for wrongful termination "when the motivation for the discharge contravenes some clear mandate of public policy[.]" *Adler v. American Standard Corporation*, 291 Md. at 47, 432 A.2d at 473. *Yuan v. Johns Hopkins Univ.*, 452 Md. 436, 450, 157 A.3d 254, 262 (2017).

The Court determined that the Plaintiff was unable to provide any "clear mandate of public policy" that is required as an element of the wrongful termination count. Not only was there no clear mandate of public policy alleged, there was also no State of Emergency Public Policy upon which Plaintiff could show that a private cause of action existed.

*As to Count II (Wrongful Termination for Violation of
Federal Public Policy OSHA General Duty)*

OSHA does not provide a private right of action, and because Plaintiff has missed the thirty-day period to file an OSHA complaint with the Department of Labor, amendment would be futile with respect to Plaintiff's OSHA claim. *Hill v. Meharry Med. Coll.*, No. 3:23CV415 (RCY), 2024 WL 23148, at 9 (E.D. Va. Jan. 2, 2024). Plaintiff's claims cannot arise under OSHA, as OSHA does not provide plaintiffs with a private right of action. See *Byrd v. Fieldcrest Mills, Inc.*, 496 F.2d 1323, 1323 (4th Cir.1974); *Hinton v. New Hope Hous., Inc.*, No. 1:11CV906 JCC/TCB, 2011 WL 5196508, at 2 (E.D. Va. Oct. 31, 2011)

The Court determined that the Plaintiff had no private cause of action to sue under an OSHA workplace violation.

*As to Count III (Wrongful Termination Violation of
State and Federal Medical Privacy Laws)*

The Plaintiff alleges a cause of action for wrongful termination based on the allegation that she was coerced into disclosing protected medical information. To the extent that Plaintiff was arguing that Defendant Pevco had no right to inquire about medical records, the Court has determined that the Plaintiff's claim is invalid and lacks any basis in law. Plaintiff argued that she was required to provide said medical information after she advised her employer that she had a medical disability which prevented her from wearing a mask. The court found no basis in law barring an employer from being able to inquire into the medical condition nor from requesting some sort of medical documentation.

As to Count IV (Wrongful Termination Breach of Contract)

At-will employment may be terminated by the employee or employer at any time for any reason. *Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 494, 665 A.2d 297 (1995); *Holden v. Univ. Sys. of Maryland*, 222 Md. App. 360, 366-67, 112 A.3d 1100, 1104 (2015). "When a plaintiff fails to demonstrate that his or her grievance is anything more than a private dispute regarding the employer's execution of normal management operating procedures, there is no cause of action for [wrongful] discharge." *Sears, Roebuck & Co. v. Wholey*, 650, 779 A.2d 408 (quoting *Lee v. Denro*, 91 Md.App. 822, 833, 605 A.2d 1017 (1992)); *Holden v. Univ. Sys. of Maryland*, 222 Md. App. 360, 367, 112 A.3d 1100, 1104 (2015).

The Plaintiff alleged, that as an at-will employee, she had a verbal agreement with Defendant Pevco which permitted her to work from home. As an at-will employee, Plaintiff has not alleged an illegal basis for which she was terminated under the law. The Court determined that there is no such claim under the law that would permit an at-will employee to *ever* be fired "if" she had previously been advised that she could work from home and then the employee failed to return to the office after the company is alleged to have changed its policy of allowing a work-from-home tenure. Plaintiff does not allege nor is there any information to support that there was a contract that would permit her to work from home indefinitely.

As to Count V (Abuse of Process)

Abuse of Process requires Some definite act or threat not authorized by the process, or aimed at an

objective not legitimate in the use of the process is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions. *Palmer Ford, Inc. v. Wood*, 298 Md. 484, 511, 471 A.2d 297, 311 (1984); *Att'y Grievance Comm'n of Maryland v. Roberts*, 394 Md. 137, 160, 904 A.2d 557, 571 (2006).

The Court determined that every part of the claim alleged by the Plaintiff was conclusory and only contained bald allegations. At no point were any facts alleged to indicate any bad faith acts on the part of any Defendant. Beyond alleging that the Defendants continued on with an appeal, there were no facts alleged to indicate that any Defendant did anything aimed at an objective that was not legitimate in the use of the process. The Court finds no factual basis for the claim and therefore, finds no basis to permit it to proceed.

Finally, although the Court has previously addressed the issue of the Plaintiffs Third Request to amend her complaint, it is worth noting again, that the Plaintiffs Motion to Amend her complaint for a third time was denied by a different Judge of this court prior to her hearing on December 20, 2024. As this Court previously wrote in its earlier Order, the Plaintiff continues to request a motion to amend her complaint each time the Defendants file a Motion to Dismiss. Each time, the complaint was amended, the Defendants' Motion to Dismiss was determined to be Moot. After having three attempts at addressing the deficiencies in her complaint, the Plaintiff continues to seek to delay the proceedings by further seeking to

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amend the complaint. The court continues to deny the request.

The Motion to Alter/Amend is DENIED.

s/ James L. Rhodes 03/03/2025
JUDGE OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY

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Appendix D

[Filed: May 26, 2026]



Supreme Court of Maryland

Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401

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May 26, 2026

NOTICE OF ORDER

Nelda Fink v. Pevco Systems International, Inc., et al.
Petition No. 468, September Term, 2025

On May 26, 2026, the Court entered an order¹ denying the petition in this Court.

/s/ Gregory Hilton
Clerk

Copy to: All counsel of record
Any unrepresented parties
Clerk, Appellate Court of Maryland
Clerk, Circuit Court

¹ The Court's order can be viewed online at
<https://www.mdcourts.gov/scm/petitions>.

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Appendix E

[Filed: Nov. 26, 2024]

NELDA FINK

Plaintiff

v.

**PEVCO SYSTEMS INTERNATIONAL, INC.,
et al.**

Defendants

IN THE CIRCUIT
COURT FOR BALTI-
MORE COUNTY

Case No. C-03-CV-
24-001408

**MOTION FOR LEAVE TO AMEND THE
COMPLAINT**

Plaintiff, Nelda Fink, respectfully moves this Honorable Court for leave to amend the complaint pursuant to Maryland Rule §2-341, and states as follows:

1. Introduction

Plaintiff seeks leave to amend the Second Amended Complaint filed October 3, 2024 to address and remove conclusory statements and to provide additional clarification of the allegations to provide a well-pleaded complaint. The proposed Third Amended Complaint is attached hereto as Exhibit A, with tracked changes attached in Exhibit B, and an Index of Changes attached in Exhibit C.

- a. On September 19, 2024, this honorable court ordered Leave to for Plaintiff's Second Amended Complaint, which after clarification by the Honorable Judge Stringer on October 3, 2024, was filed on October 3, 2024.
- b. All parties accepted Plaintiff's Second Amended Complaint as being filed properly as

noticed by their lack of response for approximately 15 days as the MD rules allow. On October 17, 2024 again Defendant Upton filed Motion to Dismiss and Alternative Motion for Summary Judgment. Defendant Pevco also filed Motion to Dismiss on October 16, 2024.

2. Legal Standard

Under Maryland Rule 2-341, leave to amend a pleading should be freely given when justice so requires. Courts generally allow amendments in the interest of resolving cases on their merits.

3. Reasons for Amendment

The proposed amendments are important for Plaintiff's case to move forward and allow Plaintiff as Prose to receive due process and justice according to Maryland Law. No causes of action or paragraphs are being added, only clarifications to what exists. The Third Amended Complaint will:

- a. Add the authorities from the State and Local Baltimore County Executive Orders,
- b. Remove conclusory statements,
- c. Provide additional clarifications, and
- d. Ensure that the complaint accurately reflects the facts and legal theories of the case.

4. No Prejudice to Defendant

Granting leave to amend will not prejudice Defendant Upton or Defendant Pevco, as the amendments are intended to clarify and detail the existing claims rather than introduce new causes of action. Defendants will have ample opportunity to respond to the amended complaint according to the Maryland rules.

5. Conclusion

For the foregoing reasons, Plaintiff respectfully requests that this Honorable Court grant leave to amend the complaint and accept the attached proposed Third Amended Complaint (Exhibits A, B and C).

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant leave to file the attached Third Amended Complaint and grant such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 21st day of October 2024.

/s/ Nelda Fink

Nelda Fink, Plaintiff

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CERTIFICATE OF SERVICE

H HEREBY CERTIFY that on this 21st day of October 2024, copies of the foregoing Motion to Amend was served via Efile and via first-class mail to:

Michael J. Hinkle (CPF #: 1302260003)

James M. Timmerman (CPF #: 9406230319)

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Attorneys for Defendant Upton

The Motion to Amend the Second Amended Complaint is Denied. The proposed Amendment will cause a further delay without addressing the substantive grounds in support of the Motion to Dismiss.

11/26/2024
/s/ Pat Stringer
Pat Stringer

Entered: Clerk, Circuit Court for
Baltimore County, MD
November 26, 2024