

Circuit Court for Montgomery County  
Case No. 409148V

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1577

September Term, 2016

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EILENE COHHN

v.

MARYLAND-NATIONAL CAPITAL PARK  
AND PLANNING COMMISSION, et al.

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Graeff,  
Leahy,  
Beachley,

JJ.

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Opinion by Beachley, J.

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Filed: October 18, 2017

\*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.

Appellant, Eilene Cohn, appeals from an order of the Circuit Court for Montgomery County granting summary judgment in favor of appellees, the Montgomery County Department of Parks (“Parks Department”) and the Maryland-National Capital Park and Planning Commission (“Commission”). On appeal, appellant presents a single issue for our review,<sup>1</sup> which we rephrase as follows:

Whether a pilot program that uses bow hunting to reduce the deer population in two county parks violates Maryland’s animal cruelty laws where a more humane method is reasonably available.

We answer this question in the negative, and affirm the judgment of the circuit court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The Commission is a state agency that, among other things, maintains a regional system of parks in Montgomery and Prince George’s Counties. On August 12, 2015, the Parks Department, which is a department of the Commission, announced the approval of a Pilot Archery Deer Management Program (“Pilot Program”) to be implemented in Great Seneca Stream Valley Park and Watts Branch Stream Valley Park, both located in

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<sup>1</sup> Appellant presents the following question:

Whether the Montgomery County Department of Parks, a division of the Maryland National-Capital Park and Planning Commission, violated Maryland’s Animal Cruelty Code when it established a Pilot Archery Managed Deer Hunting Program to reduce the deer population in two county parks, when the State’s Cruelty Code provides an exception for hunting when the “most humane method reasonably available” is employed, and the trial court determined that archery—which results in wounded deer suffering for days or longer from their wounds—is *not* the “most humane method reasonably available” to Defendants, who can use sharpshooting which results in a lower wounding rate and the more immediate death of the animals.

Montgomery County. The Pilot Program allows licensed bow hunters to reduce the deer population in these two parks. Prior to the approval of the Pilot Program, the Commission had previously implemented bow hunting to manage the deer population on park property in Prince George's County, Maryland. The Parks Department established the Pilot Program in order to evaluate the use of bow hunting as a means for managing the deer population in Montgomery County parks. Appellees acknowledge they use taxpayer funds to administer and carry out the Pilot Program.

On September 10, 2015, appellant filed a complaint in the Circuit Court for Montgomery County, alleging that the Pilot Program violated Maryland's laws against animal cruelty, and seeking a temporary restraining order, injunction, and declaratory relief. The circuit court denied appellant's request for a temporary restraining order on September 11, 2015. After agreeing to a list of stipulated facts, both sides filed for summary judgment in April 2016.

The circuit court held a hearing on the cross-motions for summary judgment on May 25, 2016. Appellant argued that the Pilot Program's use of bow hunting to reduce the deer population constitutes animal cruelty because more humane alternatives are available, such as the use of police sharpshooters. The parties stipulated that the Commission "was aware that similar programs in other jurisdictions had shown wounding rates [of deer from bow hunting] ranging from 3% to 17%."<sup>2</sup> According to appellant, bow hunting results in more

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<sup>2</sup> The parties agreed that the term "wounding rate" reflects the percentage of deer struck but not killed by a hunter during a hunt.

deer being wounded rather than being immediately killed, thereby prolonging their suffering before death. Appellees argued that bow hunting is as humane as sharpshooting, that it is the most reasonable means available, and that the animal cruelty laws should not apply to hunting when all applicable regulations are followed.

On August 25, 2016, the circuit court granted summary judgment in favor of appellees. While the circuit court found that bow hunting is less humane than sharpshooting, and that sharpshooting was reasonably available, it found that the Pilot Program's use of lawful bow hunting did not constitute animal cruelty. Appellant timely appealed.

### **STANDARD OF REVIEW**

We review a trial court's grant of summary judgment *de novo*. *Koste v. Town of Oxford*, 431 Md. 14, 25 (2013).

The appellate court will review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party. In reviewing a grant of summary judgment under Md. Rule 2-501, we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.

*Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294 (2007) (citations and quotation marks omitted). "In appeals from grants of summary judgment, Maryland appellate courts, as a general rule, will consider only the grounds upon which the lower court relied in granting summary judgment." *PaineWebber Inc. v. East*, 363 Md. 408, 422 (2001).

### **DISCUSSION**

We need not resolve whether bow hunting is less humane than sharpshooting, or whether sharpshooting was reasonably available in the two county parks covered by the Pilot Program. Even assuming *arguendo* that bow hunting is less humane than sharpshooting and that sharpshooting was reasonably available to appellees, the circuit court correctly held that the Pilot Program does not constitute animal cruelty under Maryland law.

### **The Commission's Power to Authorize Hunting**

As appellant has acknowledged, the Commission has the power to authorize hunting on property that it owns, operates, or leases. Md. Code (2012), § 17-209(b) of the Land Use Article (“LU”). Under the Code, “hunt” is defined broadly as meaning: “to pursue, capture, kill, gig, trap, shoot, or attempt to pursue, capture, kill, gig, trap, or shoot, or in any manner reduce any animal to personal possession.” LU § 17-209(a)(3); *see also* Md. Code (1973, 2012 Repl. Vol., 2016 Supp.), § 10-101(k)(1) of the Natural Resources Article (“NR”) (providing substantially the same definition). It is undisputed that—provided all applicable laws and regulations are followed—bow hunting is legal in Maryland. *See* NR § 10-415; NR § 10-301; COMAR 08.03.04.05.

Nevertheless, appellant argues that, in some circumstances, bow hunting may constitute animal cruelty. While appellant concedes that recreational bow hunting is legal, appellant maintains that the Pilot Program violates Maryland’s criminal laws against

animal cruelty because it permits the bow hunting of deer on park property when a more humane method of reducing the deer population is reasonably available.

### **Applicable Statutes**

The relevant portion of Maryland's criminal laws against animal cruelty provides that a person may not:

- (1) overdrive or overload an animal;
- (2) deprive an animal of necessary sustenance;
- (3) *inflict unnecessary suffering or pain on an animal;*
- (4) *cause, procure, or authorize an act prohibited under item (1), (2), or (3) of this subsection; or*
- (5) if the person has charge or custody of an animal, as owner or otherwise, unnecessarily fail to provide the animal with:
  - (i) nutritious food in sufficient quantity;
  - (ii) necessary veterinary care;
  - (iii) proper drink;
  - (iv) proper air;
  - (v) proper space;
  - (vi) proper shelter; or
  - (vii) proper protection from the weather.

Md. Code (2002, 2012 Repl. Vol., 2017 Supp.), § 10-604(a) of the Criminal Law Article ("CL") (emphasis added). These prohibitions do not apply to all activities. For example, there is an exception for:

an activity that may cause unavoidable physical pain to an animal, including food processing, pest elimination, animal training, and hunting, *if the person performing the activity uses the most humane method reasonably available*[.]

CL § 10-603(3) (emphasis added). Appellant relies on this section to support her argument that the Pilot Program constitutes animal cruelty.

### **Principles of Statutory Interpretation**

“It is a well-settled principle that the primary objective of statutory interpretation is ‘to ascertain and effectuate the intention of the legislature.’” *Clarksville Residents Against Mortuary Def. Fund, Inc. v. Donaldson Props.*, 453 Md. 516, 538 (2017) (quoting *Dep’t of Human Res., Balt. City Dep’t of Soc. Serv. v. Hayward*, 426 Md. 638, 649-50 (2012)).

To ascertain the intent of the General Assembly, we begin with the normal, plain meaning of the language of the statute. If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction. We neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute, and we do not construe a statute with “forced or subtle interpretations” that limit or extend its application.

We, however, do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.

*Lockshin v. Semsker*, 412 Md. 257, 275–76 (2010) (citations omitted). We may also consult the legislative history in order to ensure that our plain language interpretation is correct. *Id.* at 279.

### **Plain Language of the Animal Cruelty Statutes**

CL § 10-603(3) states that “Sections 10-601 through 10-608 of this subtitle do not apply to . . . an activity that may cause unavoidable physical pain to an animal, including food processing, pest elimination, animal training, and hunting, if the person performing the activity uses the most humane method reasonably available[.]” Based on the plain

language of CL § 10-603(3), we make two initial observations. First, CL § 10-603(3) operates only to exclude certain activities from the reach of Maryland’s criminal laws against animal cruelty. If CL § 10-603(3) does not exclude an activity, it then becomes necessary to determine whether that activity constitutes animal cruelty prohibited by another provision such as CL § 10-604(a). Second, we observe that CL § 10-603(3) is not concerned with a person’s motivation for hunting—but rather only with the method used by a person performing that activity.

If a hunter does not use the most humane method reasonably available, then it becomes necessary to determine whether that conduct violates CL § 10-604(a), which states that a person may not “inflict unnecessary suffering or pain on an animal,” or CL § 10-606(a), which states that a person may not “intentionally mutilate, torture, cruelly beat, or cruelly kill an animal.”<sup>3</sup> In other words, even assuming that a particular form of hunting is not the most humane method reasonably available, it does not rise to the level of animal cruelty unless—at the very least—it inflicts unnecessary suffering or pain on an animal.

To determine what constitutes “unnecessary suffering or pain on an animal” under CL § 10-604(a), we do not read the statute in a vacuum. In the context of hunting, we read CL § 10-604(a) in concert with other laws related to hunting that have been enacted by the General Assembly. As a starting point, the General Assembly has found and declared that:

- (1) Hunting is an important and traditional activity in which 14,000,000 Americans who are at least 16 years old participate;

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<sup>3</sup> There has been no argument that CL § 10-606(a) is applicable to the instant case.



- (2) Hunters have been and continue to be among the foremost supporters of sound wildlife management and conservation practices in the United States;
- (3) Hunters and hunting organizations provide direct assistance to wildlife managers and enforcement officers of federal, state, and local governments;
- (4) Fees for hunting licenses, permits, and stamps, and taxes on goods used by hunters, have generated billions of dollars for wildlife conservation, research, and management;
- (5) *Hunting is an essential component of effective wildlife management, as it is an important tool for reducing conflicts between people and wildlife and provides incentives for the conservation of wildlife, habitats, and ecosystems on which wildlife depends;*
- (6) Hunting is an environmentally acceptable activity that occurs and can be provided for on State public lands without adverse effects on other uses of the lands[.]

NR § 10-212(a) (emphasis added).

In general, a person may not hunt any game birds or mammals in Maryland without first obtaining a hunting license. NR § 10-301(b). Looking specifically at the laws and regulations pertaining to deer hunting, the General Assembly has established a deer bow hunting season, a deer firearm season, and a deer muzzle loader season. NR § 10-415(a). The Department of Natural Resources is tasked with promulgating regulations on the means or weapons permitted while hunting designated wildlife. NR § 10-408(b). Those regulations appear at COMAR 08.03.04.05, and contain detailed guidance on permissible specifications for bows and firearms that may be used to hunt deer. For example, individuals hunting deer with a bow may not use poisoned or explosive-tipped arrows, and

must use an arrow with a sharpened broadhead with metal points and a minimum width of 7/8 inch. COMAR 08.03.04.05B.

Because the General Assembly has recognized the importance of hunting, and enacted laws regulating such activity, we do not read CL § 10-604(a) as prohibiting the bow hunting at issue here—provided that the hunting activity complies with the laws and regulations intended to ensure the humaneness of the activity.<sup>4</sup>

### **Legislative Intent**

Our reading of CL § 10-603(3) and CL § 10-604(a) is validated by the legislative history of the statutes. “When attempting to discern legislative intent, ‘[i]t is a well-settled practice of this Court to refer to the Revisor's Notes when searching for legislative intent of an enactment.’” *Comptroller of Treasury v. Blanton*, 390 Md. 528, 538 (2006) (quoting *Dean v. Pinder*, 312 Md. 154, 163 (1988)). Here, the 2002 Revisor’s Note for CL § 10-603 expressly clarifies that “[CL § 10-603(3)] is revised as an exclusion from the application of animal cruelty provisions, rather than a definition of ‘cruelty.’” In other words, contrary to appellant’s claims, it is not enough to merely show that the Pilot Program does not implement the most humane method reasonably available.

With regard to CL § 10-604(a), we look to Chapter 448 of the 2006 Session Laws of Maryland (“Chapter 448”), which amended CL § 10-604(a) as follows:

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<sup>4</sup> For the first time on appeal, appellant argues that the Pilot Program does not comply with all of the Department of Natural Resources’ regulations on bow hunting. However, appellant’s alleged flaws are all procedural in nature, and none relate to the humaneness of the actual bow hunting activity conducted through the Pilot Program.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Criminal Law

10-604.

- (a) A person may not:
- (1) overdrive or overload an animal;
  - (2) deprive an animal of necessary sustenance;
  - (3) inflict unnecessary suffering or pain on an animal;
  - ~~(3)~~ (4) cause, procure, or authorize an act prohibited under ~~item~~ ~~(1) or item (2)~~ item (1), (2), (3) of this subsection; or
  - ~~(4)~~ (5) if the person has charge or custody of an animal, as owner or otherwise:
    - ~~(i) inflict unnecessary suffering or pain on the animal; or~~
    - (ii), unnecessarily fail to provide the animal with nutritious food in sufficient quantity, necessary veterinary care, proper drink, air, space, shelter, or protection from the weather. . . .

SECTION 2. AND BE IT FURTHER ENACTED, *That this Act may not be construed to apply to lawful hunting or lawful trapping.*

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2006.

(Emphasis added).

While SECTION 2 of Chapter 448 was not codified, we have previously acknowledged that provisions of the law need not be codified in order to have legal effect. *Roe v. Doe*, 193 Md. App. 558, 564-66 (2010), *aff'd*, 419 Md. 687, 709-10 (2011); *see also Prince George's Cnty. v. Maringo*, 151 Md. App. 662, 671 n.1 (2003) (“The parties do not dispute that this uncodified portion of the bill has the same force and effect as the codified portion.”). Here, SECTION 2 of Chapter 448 manifests the explicit legislative intent that lawful hunting and trapping are not within the ambit of CL § 10-604’s prohibitions against

animal cruelty. Accordingly, the legislative intent is consistent with our interpretation of the plain language of the statute.

### **The Pilot Program Does Not Constitute Animal Cruelty**

Based on our reading and interpretation of the relevant animal cruelty statutes, we hold that appellees' Pilot Program, which seeks to manage the deer population in county parks through lawful bow hunting, does not constitute animal cruelty. Even assuming the Pilot Program is not exempted from the animal cruelty provisions pursuant to CL § 10-603(3), it does not violate the prohibitions of CL § 10-604(a). There is no indication in the record that the Pilot Program will be conducted in a way that violates the applicable laws and regulations pertaining to bow hunting. Indeed, at oral argument, appellee represented that the Pilot Program would comply with all relevant Department of Natural Resources regulations on bow hunting. It is a misdemeanor for any person to violate the sections of the Natural Resources Article related to the protection and preservation of wildlife, or the related regulations promulgated by the Department of Natural Resources—including the regulations that delineate the acceptable means of bow hunting. NR § 10-1101. Nothing in the Pilot Program releases its participating bow hunters from their legal obligation to follow the laws and regulations designed to ensure that hunting is done in an acceptably humane way.

While appellant argues that the Pilot Program is distinguished from “recreational” hunting, appellant does not provide any authority for the proposition that the Natural Resources Article is concerned solely with recreational hunting. None of the provisions in the Natural Resources Article limits its application to recreational hunting. To the contrary, the General Assembly has explicitly recognized that, “Hunting is an essential component of effective wildlife management[.]” NR § 10-212.

Finally, we find support for our conclusion in *Taub v. State*, 296 Md. 439 (1983). There, the Court of Appeals held that the criminal animal cruelty provisions were inapplicable to a doctor conducting medical and scientific research through experiments on monkeys. *Id.* at 440. In holding that the doctor’s research did not constitute animal cruelty, the Court did not base its decision on any factual finding,<sup>5</sup> but rather on its belief that the legislature did not intend for the doctor’s research—which was conducted under a federal program, and subject to regulations regarding humane handling, care, and treatment of animals—to fall within the definition of animal cruelty.

Here, we are confident that the General Assembly was aware of the provisions in the Natural Resources Article which recognize the importance of hunting for a variety of reasons, including wildlife population management. We are also confident that when the

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<sup>5</sup> In a footnote, appellant argues that the instant case should be remanded for further development of the factual record on the issue of whether it was “necessary” for appellees to use hunting in order to reduce the deer population. Because we hold that lawful hunting does not violate CL § 10-604(a), this issue does not create a genuine dispute as to any material fact.

General Assembly gave the Department of Natural Resources the authority to promulgate regulations about permissible means for hunting, it did not intend for hunting in compliance with those regulations to constitute animal cruelty. Because lawful bow hunting of deer is permitted in Maryland—and therefore does not constitute animal cruelty—we conclude that the Commission’s authorization of bow hunting on its lands pursuant to the Pilot Program does not violate Maryland law.

**CONCLUSION**

For the foregoing reasons, we hold that the Pilot Program does not constitute animal cruelty under CL § 10-604(a). Therefore, the circuit court correctly granted summary judgment in favor of appellees.

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