UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0023

September Term, 2015

JEROME SACHS, ET UX.

v.

HIGHFIELD HOUSE
CONDOMINIUM, INC., ET AL.

Wright,
Nazarian,
*Hotten, Michelle D.,

JJ.

Opinion by Wright, J.

Filed: December 28, 2015

*Michelle D. Hotten, J., participated in the hearing of this case while still an active member of this Court but did not participate in either the preparation or adoption of this opinion.

*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.

Appellants, Jerome and Mary Sachs (collectively, the "Sachses"), appeal from an order of the Circuit Court for Baltimore City that granted a motion for summary judgment filed by appellees, Highfield House Condominium, Inc. ("Highfield House"); its management company, Brodie Management, Inc. ("Brodie"); its on-site property manager, Toni Perkins; and its then-Board President, Marilyn Nicholas. We are asked to determine whether the circuit court erred in granting that motion.[1] For the reasons stated below, we affirm.[2]

---

[1] In their brief, the Sachses worded their inquiry as follows:

> Did the court err in granting defendants' motions for summary judgment?
>
> Did the court err in failing to grant plaintiffs' motion for partial summary judgment?
>
> Did the court err in refusing to consider plaintiffs' motion for summary judgment, declaring it to be "moot"?
>
> Did the court err in concluding that as a matter of law Luke (the service animal) was not a service animal?
>
> Did the court err in concluding that there was no retaliation by defendant because plaintiffs were exercising their statutory rights under the Fair Housing Act?
>
> Did the trial court err in failing to declare that plaintiffs were entitled to a response to their request for a reasonable accommodation in a reasonable time period, and that the determination as to whether Highfield House's response was reasonable is a matter for the jury?

[2] On July 27, 2015, appellees filed with this Court a Motion to Strike Part of Record Extract filed by Appellants, stating that "[p]ages E83-E85 . . . comprise an affidavit of Appellant Jerome Sachs that was not part of the lower court's record nor has it been seen before by Appellees nor was it presented in any proceeding throughout the long history of the case." Having received no response from the Sachses (continued…)

Facts

On December 17, 2010, the Sachses filed a complaint against appellees in the circuit court seeking a declaratory judgment, injunctive relief, civil penalty, and damages. On August 16, 2011, they amended their complaint to allege a violation of rights granted to them by the Maryland Fair Housing Act (the "Act"), then codified at Md. Code (2009 Supp.), § 20-701 *et seq.* of the State Government Article. We previously summarized the Sachses' claims and the subsequent proceedings as follows:

> Mr. and Mrs. Sachs alleged in Count I of their complaint that: 1) Mr. Sachs, at all times here pertinent, had a hearing disability that made him "disabled" within the meaning of the Act; 2) because of his hearing disability, Mr. Sachs could not hear the fire alarm at Highfield House when he was not wearing his hearing aid; 3) Mr. Sachs asked Highfield House and the Council of Unit Owners to accommodate his disability by allowing him to keep a "service dog" with him on the premises; 4) the request to have a service dog was denied by the [appellees] and/or their agents; 5) this denial constituted a violation of Mr. Sachs's rights as set forth in section 20-706(b)(4) of the Act.
>
> Section 20-706(b)(4) of the Act, with exception not here relevant, prohibits land owners, landlords and others from refusing "to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling . . . ."
>
> The complaint alleged in Count II that the [appellants] and/or their agents violated section 20-708 of the Act. That last mentioned section of the Act reads as follows:

---

or any opposition to this motion, we hereby strike pages E83-E85 of the Sachses' record extract. *See Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 663, 993 A.2d 153, 175 (2010) ("an appellate court must confine its review to the evidence actually before the trial court when it reached its decision") (citation omitted); *Cmty. Realty Co. v. Siskos*, 31 Md. App. 99, 102, 354 A.2d 181, 183 (1976) ("The parties are not entitled to supplement the record by inserting into their record extract such foreign matter as they may deem advisable.").

> A person may not coerce, intimidate, threaten, interfere with, or retaliate against any person:
>
> > (1) in the exercise or enjoyment of any right granted or protected by this subtitle;
> >
> > (2) because a person has exercised or enjoyed any right granted or protected by this subtitle; or
> >
> > (3) because a person has aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this subtitle.
>
> According to the allegations in Count II, as a result of the [appellees'] refusal to waive the "no pet" policy, the [Sachses] filed a "formal complaint" with the United States Department of Housing and Urban Development ("HUD"). That complaint resulted in a referral by HUD to the Maryland Commission on Human Relations (the "Commission") so that the Commission could conduct an investigation into the Sachs's complaint. [The Sachses] alleged that the [appellees] retaliated against Mr. Sachs because he filed the complaint with HUD. Such retaliation violated the Act because Mr. Sachs' filing of the complaint was a "protected activity under the Act."
>
> [The Sachses] also alleged in Count II that after Mr. and Mrs. Sachs purchased a "service dog" and brought the dog onto the premises to live with them, the [appellees] "undertook a campaign of harassment to intimidate and coerce [the Sachses] to [force them to] abandon Mr. Sachs's pursuit of his fair housing rights. Also, according to Count II, the [appellees] retaliated against Mrs. Sachs "because she aided or encouraged Mr. Sachs in the exercise of his legal rights."
>
> * * *
>
> In the amended complaint, the [Sachses] asked, *inter alia*, that the court "declare the actions of the [d]efendants complained of herein to be in violation of Title 20 State Gov't. Article, Maryland Code Annotated, § 20-706(b)(4) and § 20-708." Besides declaratory relief, [the Sachses] also asked for compensatory damages and injunctive relief.

All the [appellees] answered the amended complaint and denied liability. Extensive discovery then took place. During discovery, the following facts, among many others, were established:

> • On November 23, 2005, counsel for Mr. Sachs informed counsel for Highfield House that Mr. Sachs intended to bring a "service animal" onto the premises pursuant to the Act. Counsel for Mr. Sachs stated that his client needed the service animal "as a result of his hearing deficiency and his inability to hear a fire alarm [at Highfield House] should the alarm go off within the building."
>
> • Attached to the November 23, 2005 letter from Mr. Sachs's counsel was a missive from Mr. Sachs's primary care physician/internist who advised that Mr. Sachs had a "severe hearing problem" for which he wore hearing aids but, because he has been advised to take the hearing aids off at night while sleeping a problem [existed] because without the hearing aids "he is unable to hear any fire alarm in the building where he lives."
>
> • At the end of February, 2006, Mr. and Mrs. Sachs purchased a two month old German shepherd puppy, whom they named "Luke" and brought Luke to reside with them at Highfield House. At that point, Luke was untrained to perform any assistive or service task for Mr. Sachs.
>
> • A few days after Luke was brought onto the premises, an agent of Highfield House wrote to Mr. and Mrs. Sachs and said that although Highfield House would not waive its "no pet" policy, it was willing to purchase and install at its expense "a Strobe and Horn Alarm or a Visible and Audible/Visible signaling Appliance." In the March 2 letter, Mr. Sachs was instructed to contact Terrence Lee, an employee of Brodie Management, to make arrangements for the installation of such a system.
>
> • By letter dated March 14, 2006, counsel for Mr. and Mrs. Sachs advised counsel for Highfield House that Luke would not be removed. During the next few months, Highfield House, by its agents, on several occasions reiterated the offer to install a Strobe and Horn Alarm or a Visible and

Audible/Visible signaling Appliance but that offer was never accepted nor did the [Sachses] explain why they were rejecting the offer.

• On April 28, 2006, Toni Perkins wrote a letter to Mr. and Mrs. Sachs demanding that they remove Luke from their unit no later than May 8, 2006, and warning them that if they did not do so, a hearing would be held before the Board of Directors of the Condominium Association to consider sanctions.

• On May 3, 2006, counsel for Mr. and Mrs. Sachs wrote a letter to counsel for Highfield House. The letter stated, *inter alia*, that the Sachs' refused to remove their "service animal" and that the actions of Highfield House constituted a violation "of applicable Fair Housing Laws . . . ."

• On May 18, 2008, Mr. Sachs filed a complaint with HUD alleging, *inter alia*, that the Council of Unit Owners and Highfield House had violated the Act by refusing to accommodate his hearing loss disability. The complaint was later amended to include Mary Sachs's allegation that the Council of Unit Owners and Highfield House and their agent had violated the Act by intimidating and threatening her because she had aided or encouraged her husband in exercising his rights under the Act.

• On June 7, 2006, Mr. and Mrs. Sachs were sent a second "cease and desist" letter from the Board of Directors of Highfield House stating that they would hold a hearing on June 29, 2006, at which time it would consider imposing a proposed sanction of up to $20 per day due to Mr. and Mrs. Sachs's failure to correct the violation of the "no pet" rule.

• On June 7, 2006, the same date that they received the second "cease and desist" letter," Mr. and Mrs. Sachs listed their Highfield House condominium for sale.

• On June 29, 2006, Mr. and Mrs. Sachs and their counsel attended a meeting called by the Highfield House's Board of Directors. The Sachses argued that Mr. Sachs

> needed Luke, who was then six months old, as an accommodation in order to hear the building's fire alarm. The Board, at the conclusion of the meeting, made a decision to take no action concerning the alleged "no pet" violation, pending a decision concerning the complaint that was to be heard by the Maryland Commission on Human Relations.
>
> • In March of 2007, Mr. and Mrs. Sachs moved out of Highfield House into Harper House Condominiums at Cross Keys, which also is in Baltimore City.
>
> • On June 18, 2007, the Maryland Commission on Human Relations issued a written opinion in which it found that Highfield House "chose not to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford a handicapped individual [Mr. Sachs] equal opportunity to use and enjoy a dwelling."
>
> • Approximately three years later, on June 25, 2010, the Maryland Commission on Human Relations issued an amended written finding in which it concluded that Highfield House's then president, Marilyn Nicholas, along with Toni Perkins and Brodie Management violated the Sachses' fair housing rights when they retaliated against Mrs. Sachs "who was trying to assist her husband" after he sought to obtain an accommodation for his disability . . . .

Sachs v. Highfield House Condo., Inc., No. 483, Sept. Term, 2012, pp. 1-7 (Feb. 6, 2014).

On April 2, 2012, appellees filed a motion for summary judgment, which the circuit court granted on April 27, 2012. The Sachses subsequently noted an appeal to this Court. On February 6, 2014, we vacated the circuit court's judgment, noting that the motions court failed to state its reasons for granting summary judgment as to Count II and failed to file "a written order declaring the rights of the parties as to either Count I or Count II." *Id.* at 10. Accordingly, we instructed the circuit court, upon remand, to

"determine if summary judgment is warranted as to either Count I or II [and] declare the rights of the parties, in writing, as to the claims made in both Counts I and II of the amended complaint." *Id.* at 12.

On November 26, 2014, after the circuit court's judgment was vacated pursuant to our mandate, appellees renewed their motion for summary judgment arguing that (1) this was not an appropriate action for declaratory judgment because the Act provides a special form of remedy and no justiciable controversy existed; (2) appellees did not violate § 20-706(b)(4) of the Act because the requested accommodation was neither reasonable nor necessary and appellees did not refuse to provide a reasonable accommodation; and (3) appellees did not violate § 20-708 of the Act because the Sachses were not engaged in a protected activity and appellees did not take an adverse action against the Sachses.

On December 2, 2014, the Sachses filed a motion for partial summary judgment, arguing that Highfield House "failed in its burden to present a *prima facie* case in favor of its alternative accommodation," and it therefore violated the provisions of § 20-706(b)(4) of the Act. In support of their motion, the Sachses averred that there was no dispute as to the following facts:

> A. Jerome Sachs . . . requested that Highfield House amend its house rules to permit him to obtain a service dog as a reasonable and necessary accommodation for his hearing loss disability . . . .
>
> B. Highfield House, by counsel, responded, admitting [Mr. Sachs's] disability and rejecting [his] request, proposing an alternative accommodation in the form of a "horn-strobe["] alarm device . . . .

> C. Highfield House had done nothing to investigate the device it proposed except obtain manufacturer's specifications [] . . . . In fact, the specifications demonstrate that the proposed device would not work because it could not detect the products of combustion and relied upon the existing alarm system for that detection (which occurs when a human discovers fire and pulls the alarm). The proposed device and the existing alarm system at Highfield House were incompatible.

On February 6, 2015, the circuit court issued a memorandum opinion and order granting appellees' motion for summary judgment and denying the Sachses' motion as moot. As to Count I, the court concluded that the Sachses failed to meet their burden of establishing that their requested accommodation was "both reasonable and necessary." According to the court, Luke "was not a service dog" and "did not ameliorate Mr. Sachs's disability because Luke was not being used to alleviate his hearing impairment." Moreover, the circuit court found that there was no "failure to accommodate because [appellees] never deprived Mr. Sachs of his requested accommodation." Specifically, "Luke remained at Highfield [House] until the [Sachses] moved to another condominium.

As to Count II, the circuit court concluded that the Sachses' claim for retaliation failed because: (1) the Sachses "were never engaged in a protected activity because Luke was not a service dog;" and (2) there was "no link between [the Sachses'] alleged engagement in a protected activity and the adverse action [they] suffered." According to the court, the alleged actions of individuals in the community could not be attributed to appellees, and there was no evidence that appellees' actions were retaliatory; rather, they were "reasonable under the circumstances." Because the circuit court disposed of both

counts, it did not address the Sachses' motion for partial summary judgment. On March 3, 2015, the Sachses noted this appeal.

Additional facts will be included, below, as they become relevant to our discussion.

Standard of Review

Pursuant to Md. Rule 2-501(a), "[a]ny party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." When appellate courts review a grant of summary judgment, "'we must make the threshold determination as to whether a genuine dispute of material fact exists, and only where such dispute is absent will we proceed to review determinations of law.'" *Stachowski v. Sysco Food Servs. of Balt., Inc.*, 402 Md. 506, 515-16 (2007) (quoting *Remsburg v. Montgomery*, 376 Md. 568, 579 (2003)). Because under Maryland's summary judgment rule, a trial court determines issues of law, makes rulings as a matter of law, and resolves no disputed issues of fact, "the standard for appellate review of a trial court's grant of a motion for summary judgment is simply whether the trial court was legally correct." *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 737 (1993) (citations omitted); *see also Messing v. Bank of Am., N.A.*, 373 Md. 672, 684 (2003) ("The standard of review of a trial court's grant of a motion for summary judgment on the

law is *de novo*, that is, whether the trial court's legal conclusions were legally correct.") (Citations omitted).

Discussion

The Sachses argue that the circuit court erred in granting summary judgment in appellees' favor. In particular, the Sachses aver that the court should have granted their motion for partial summary judgment as to Count I because "Mr. Sachs requested a particular accommodation, in the form of a dog," and appellees' denial of that request violated § 20-706(b)(4) of the Act. The Sachses also contend that appellees' motion for summary judgment should not have been granted as to Count II because Luke was, as a matter of law, a service animal, and there was evidence to support the Sachses' allegations of retaliation. Finally, the Sachses argue that the case should have been allowed to go to the jury so that it could decide whether Highfield House "promptly" responded to Mr. Sachs's initial request for a service dog.

A. Count I: § 20-706(b)(4) of the Act

Section 20-706(b)(4) of the Act provides that a person may not "refuse to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling." In *Wallace H. Campbell & Co. v. Md. Comm'n on Human Relations*, 202 Md. App. 650, 668 (2011), we explained:

> To establish a *prima facie* case of failure to accommodate under the [Act], a claimant must show that he is handicapped . . . that the party charged knew or should reasonably have known of his handicap . . . [,] [and] that he requested a particular accommodation that is *both reasonable and*

> *necessary* to allow him an equal opportunity to use and enjoy the housing in question.

(Citations omitted and emphasis added). Moreover, the claimant must show that the respondent refused to provide reasonable accommodations. *Id.* at 664-65

In this case, the Sachses failed to prove that their requested accommodation (*i.e.*, Luke) was either reasonable or necessary because Luke was not a "service animal" as they alleged. It was undisputed that the Sachses obtained Luke in February 2006, when Luke was only two months old, and did not hire anyone to train Luke until June of that year. Even then, the training provided to Luke did not address the specific skill for which Luke was to provide assistance – alerting Mr. Sachs to the activation of Highfield House's fire alarm – and it was not until Luke approached one year old that Luke could assist Mr. Sachs in any manner. There was also evidence to show that Luke barked randomly overnight and left Mr. Sachs's presence for 30-45 minutes at a time while he was sleeping and without his hearing aids. Consequently, we agree with appellees that Luke, "whether or not properly trained, was not . . . properly used as a service animal," but "constituted a nuisance and interfered with the comfort, safety, and enjoyment of the other unit owners at Highfield House."

The Sachses rely on *Overlook Mut. Homes, Inc. v. Spencer*, 666 F. Supp. 2d 850 (S.D. Ohio 2009), to support their argument, but their reliance on that case is misplaced. In *Overlook Mut. Homes*, the Court concluded that "accommodations under the [Act] regarding animals are not limited to service animals . . . but also to support and therapy animals." *Id.* at 859. Thus, it allowed the residents in that case to keep their

"companion/service dog." *Id.* at 852, 861. *Overlook Mut. Homes* differs from this case, however, because there, the claimant, "Lynsey was currently receiving psychological counseling and . . . her psychologist had recommended that Lynsey have a companion/service dog to facilitate her treatment." *Id.* at 852. Lynsey's dog, therefore, needed no particular training other than to provide comfort to its owner. By contrast, in this case, Mr. Sachs's primary care physician advised that Mr. Sachs had a "severe hearing problem" for which he needed assistance. Thus, for Luke's presence to be reasonable and necessary, it must have had the specific training needed to assist Mr. Sachs with his impairment.

The Sachses' argument regarding the denial of their motion for partial summary judgment is likewise misplaced because it focuses on the applicability of the Act to the "Strobe and Horn Alarm or a Visible and Audible/Visible signaling Appliance," which appellees offered to install, rather than to the creation of an exception to the "no pet" policy for Luke, which was what the Sachses requested. As we previously stated, in order to show a violation of the Act, the claimant must show that the respondent *refused* to provide reasonable accommodations. *Wallace H. Campbell & Co.*, 202 Md. App. at 664-65. We further acknowledged, however, that "the plain meaning of 'refuse' requires an underlying request." *Id.* at 667. Because the Sachses never requested the "Strobe and Horn Alarm or a Visible and Audible/Visible signaling Appliance," we need not engage in analysis of the applicable factors with regard to appellees' proposed accommodation.

For these reasons, we agree with the circuit court that the Sachses failed to meet their burden of establishing that their requested accommodation was "both reasonable and necessary," and that there was no "failure to accommodate because [appellees] never deprived Mr. Sachs of his requested accommodation."

B. Count II: § 20-708 of the Act

Pursuant to § 20-708 of the Act:

> A person may not coerce, intimidate, threaten, interfere with, or *retaliate* against any person:
>
> > (1) in the exercise or enjoyment of *any right granted or protected* by this subtitle;
> >
> > (2) because a person has exercised or enjoyed any right granted or protected by this subtitle; or
> >
> > (3) because a person has aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by this subtitle.

(Emphasis added). A plain reading of this statute indicates that in order to prove a violation of this section, the Sachses needed to show that: (1) appellees retaliated while (2) the Sachses were exercising a right granted or protected by the Act. As we previously explained, however, Luke was never recognized as a "service dog." As such, by having Luke at Highfield House, which had a "no pet" policy, the Sachses were not exercising a right granted or protected by the Act. Because the Sachses failed to meet a required element, it is of no consequence whether or not there was sufficient evidence of appellees' alleged retaliation, and the circuit court did not err in granting appellees' motion for summary judgment.

C. "Prompt" Response

Finally, the Sachses argue that the circuit court should have allowed this case to proceed to trial because the Sachses "were entitled to a response to their request for a reasonable accommodation in a reasonable time period" and the determination as to whether Highfield House "promptly" responded was a matter for the jury. The Sachses note that they made their initial request in November 2005, but did not receive a request until over three months later.

In advancing this argument, the Sachses fail to show that they sustained any prejudice as a result of the circuit court's decision not to allow the case to proceed to the jury on this narrow issue. *See Barksdale v. Wilkowsky*, 419 Md. 649, 660 (2011) (stating that, generally, the appealing party has the burden "to show that an error caused prejudice") (citations omitted); *Crane v. Dunn*, 382 Md. 83, 91 (2004) (stating that "[i]t is the policy of this Court not to reverse for harmless error and the burden is on the appellant in all cases to show prejudice as well as error"). Even assuming that the Sachses were entitled to a response well short of three months, the Sachses failed to show any prejudice in light of their inability to prove that appellees violated the provisions of the Act cited in the Sachses' complaint.

Thus, for all of the foregoing reasons, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.