

Circuit Court for Montgomery County
Case No. 426695

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0301

September Term, 2018

MARGARET A. LARUE

v.

THE HONORABLE BRIAN FROSH,
ATTORNEY GENERAL OF MARYLAND,
et al.

Wright,
Arthur,
Beachley,

JJ.

Opinion by Wright, J.

Filed: July 16, 2019

*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.

Margaret LaRue, appellant, challenges the constitutionality of Md. Code (1988, 2004 Repl. Vol.), Tax-General Article (“Tax-Gen”) § 7-203 and Md. Code (1982, 2015 Repl. Vol.), Health-General Article (“Health-Gen”) § 6-101(b)(1) (collectively “the domestic partnership statutes”). After the death of appellant’s partner, Jean Claude-Andre (“decedent”), the Register of Wills (“the Register”), appellee, attempted to collect an inheritance tax from appellant on property owned by the decedent. Appellant requested an exemption under Tax-Gen § 7-203; her request was denied. She appealed to the Maryland Tax Court (“the Tax Court”), which reversed the denial of her refund claim as applied to the joint primary residence and affirmed the Register as to the remaining inheritance tax.

That same day, appellant petitioned the Circuit Court for Montgomery County for declaratory and injunctive relief, as well as judicial review of the Tax Court’s decision. Appellant presents the following questions for our review, which we have condensed and reworded for clarity:¹

¹ Appellant presented her questions as follows:

1. Whether the circuit court erred in denying the Appellant’s Complaint on the doctrine of *res judicata* when the Maryland Tax Court never considered the constitutionality of the Maryland Domestic Partnership Statute?
2. Whether the Circuit Court erred in denying the Appellant’s request for injunctive relief based on the [premise that the] Maryland Tax Court is unable to grant injunctive relief?

1. Whether the circuit court erred in finding that appellant's claims were barred due to *res judicata* and administrative exhaustion?
2. Whether the circuit court erred in finding that appellant's constitutional rights were not violated by the Maryland Domestic Partnership Statutes?

We shall hold that appellant failed to exhaust her administrative remedies before the Tax Court and decline to address her constitutional claims.

BACKGROUND

In 2015, under Tax-Gen § 7-203, the joint residential property of a decedent and a surviving domestic partner was not subject to Maryland's inheritance tax if a surviving domestic partner provided (1) evidence of a domestic partnership through an affidavit signed by both the decedent and the surviving domestic partner, and (2) other documentary evidence. As of July 2017, the surviving domestic partner only needs to provide either an affidavit signed by the parties or any of two forms of proof. Tax-Gen § 7-203(1).

Jean Claude Andre, decedent, died in December 2014. Together, appellant and decedent owned a condominium, as joint tenants with rights of survivorship, valued at

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3. Whether the Circuit Court erred in holding that the Maryland Domestic Partnership inheritance tax exemption did not violate the Appellant's substantial due process rights as a surviving domestic partner?
 4. Whether the Circuit Court erred holding that the Maryland Domestic Partnership inheritance tax exemption did not violate Maryland'[s] Equal Protection Clause when Maryland Domestic Partners are systemically denied the same equal rights as married persons?

\$140,000.00. The couple also shared joint checking and savings accounts valued at \$281,207.83.

Register of Wills' Determination of Inheritance Tax

On June 2, 2015, the Register assessed a non-probate inheritance tax against appellant for \$15,764.50. The next day, appellant requested an inheritance tax exemption for the condominium and joint accounts shared by her and decedent. On June 15, 2015, the Register denied appellant's request because she and decedent did not sign an "Affidavit of Domestic Partnership."

On August 5, 2015, appellant filed a "Petition to Abate the Inheritance Taxes" and argued that Health-Gen § 6-101 did not mandate an "Affidavit of Domestic Partnership." On September 2, 2015, the Register denied her request, and appellant paid the inheritance tax in full under protest.

Maryland Tax Court

On December 13, 2015, appellant appealed the Register's decision to the Tax Court. Appellant argued that as decedent's surviving domestic partner she was exempt from paying the inheritance tax. She also argued that the Register misapplied the Maryland Tax Statutes as to the jointly-owned real property against her. On August 31, 2016, the Tax Court abated the inheritance tax after finding that the Register misapplied the Maryland Domestic Partnership Statute.

First Lawsuit

On November 9, 2016, appellant filed a petition to obtain declaratory relief that she was decedent’s former domestic partner. She also sought judicial review of the Tax Court’s denial of the re-calculation of the inheritance tax as to her personal property. On March 13, 2017, the circuit court granted appellant’s motion for summary judgment in part, and found that she was the “lawful surviving domestic partner of the decedent, Jean-Claude Andre[.]”

Current Lawsuit

Appellant amended her complaint to add the Attorney General, Brian Frosh, and Peter Franchot, the Comptroller of Maryland (collectively “appellees”). On March 13, 2018, the circuit court heard arguments on the parties’ cross-motions for summary judgment. The court granted summary judgment in favor of the appellees and found that the Maryland Domestic Partnership Laws did not violate appellant’s constitutional rights.

STANDARD OF REVIEW

“We review the trial court’s grant of [a motion for summary judgment] *de novo* as to the law and in a light most favorable to [appellant], the non-moving party.”

Crickenberger v. Hyundai Motor Am., 404 Md. 37, 45 (2008). “Summary judgment is appropriate where ‘there is no genuine dispute as to any material fact’ and ‘the party in whose favor judgment is entered is entitled to judgment as a matter of law.’” *Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294 (2007) (quoting Md. Rule 2-501(f)).

“[T]he mere existence of a scintilla of evidence in support of the plaintiffs’ claim is insufficient to preclude the grant of summary judgment; there must be evidence upon

which the [trier of fact] could reasonably find for the plaintiff.” *Crickenberger*, 404 Md. at 45 (quoting *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738-39 (1993)).

“[W]hile a court must resolve all inferences in favor of the party opposing summary judgment, those inferences must be reasonable ones.” *Id.* (quoting *Beatty*, 330 Md. at 739).

DISCUSSION

I. Administrative Exhaustion

Appellees aver that administrative exhaustion bars appellant’s claim. The Maryland Declaratory Judgment Act, Md. Code (1973, 2013 Rep. Vol.), Courts and Judicial Proceedings Article (“CJP”) § 3-409(b), provides:

If a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of a proceeding under this subtitle.

Generally, a party must exhaust their administrative remedies and obtain a final decision before resorting to the courts. *Priester v. Baltimore County*, 232 Md. App. 178, 193 (2017). The Court of Appeals has summarized that:

Whenever the Legislature provides an administrative and judicial review remedy for a particular matter or matters, the relationship between that administrative remedy and a possible alternative judicial remedy will ordinarily fall into one of three categories.

First, the administrative remedy may be exclusive, thus precluding any resort to an alternative remedy. Under this scenario, there simply is no alternative cause of action for matters covered by the statutory administrative remedy.

Second, the administrative remedy may be primary but not exclusive. In this situation, a claimant must invoke and exhaust the administrative

remedy, and seek judicial review of an adverse administrative decision, before a court can properly adjudicate the merits of the alternative judicial remedy.

* * *

Third, the administrative remedy and the alternative judicial remedy may be fully concurrent, with neither remedy being primary, and the plaintiff at his or her option may pursue the judicial remedy without the necessity of invoking and exhausting the administrative remedy.

Prince George’s County v. Ray’s Used Cars, 398 Md. 632, 644-45 (2007) (footnote omitted) (quoting *Zappone v. Liberty Life Ins. Co.*, 349 Md. 45, 60-61(1998)).

There is a presumption that a remedy is primary if the legislature has provided an administrative remedy for particular matters. *Furnitureland South, Inc. v. Comptroller of Treasury of State*, 364 Md. 126, 133 (2001). The Tax-General Article is “comprehensive because it extensively, if not exhaustively, governs the means by which state and local taxes are to be collected.” *Holzheid v. Comptroller of Treasury of Maryland*, 240 Md. App. 371, 391 (2019). Tax-Gen § 13-532 provides for judicial review of the final decision of the Tax Court.² Because the administrative remedy provided here is primary, and thus falls into the second category listed by the court in *Ray’s Used Cars*, 398 Md. at

² Tax-Gen § 13-532 provides:

(a)(1) A final order of the Tax Court is subject to judicial review as provided for contested cases in §§ 10-222 and 10-223 of the State Government Article.

(2) Any party to the Tax Court proceeding, including a governmental unit, may appeal a final order of the Tax Court to the circuit court.

644, appellant was required to bring her constitutional claims before the Tax Court before seeking judicial review. However, because she failed to do so, she is barred from raising her claim at this time. We explain below.

The Constitutional Exception to Administrative Exhaustion

The Court of Appeals has recognized five exceptions to the administrative exhaustion requirement as follows:

1. When the legislative body has indicated an intention that exhaustion of administrative remedies was not a precondition to the institution of normal judicial action. *White v. Prince George's [County]*, 282 Md. 641, 649 (1978).
2. When there is a direct attack, constitutional or otherwise, upon the power or authority (including whether it was validly enacted) of the legislative body to pass the legislation from which relief is sought, as contrasted with a constitutional or other type issue that goes to the application of a general statute to a particular situation. *Harbor Island Marina v. Calvert [County]*, 286 Md. 303, 308 (1979).
3. When an agency requires a party to follow, in a manner and to a degree that is significant, an unauthorized procedure. *Stark v. Board of Registration*, 179 Md. 276, 284-85 (1941).
4. Where the administrative agency cannot provide to any substantial degree a remedy. *Poe v. Baltimore City*, 241 Md. 303, 308-09 (1966).
5. When the object of, as well as the issues presented by, a judicial proceeding only tangentially or incidentally concern matters which the administrative agency was legislatively created to solve, and do not, in any meaningful way, call for or involve applications of its expertise. *[Maryland]-Nat'l [Capital] [Park] & [Planning] v. [Washington] Nat'l Arena*, 282 Md. 588, 594-604 (1978).

United Ins. Co. of America v. Maryland Ins. Admin., 450 Md. 1, 34-35 (2016) (quoting *Prince George's County v. Blumberg*, 288 Md. 275, 284-85 (1980)).

Appellant relies on the constitutional exception and avers that because she challenges the validity of the domestic partnership statutes, the exhaustion doctrine does not apply. She relies on *Comptroller of the Treasury v. Zorzit*, 221 Md. App. 274 (2015), for support. Specifically, appellant frames her question as this: whether the General Assembly has the authority and power to create a law that discriminates against surviving domestic partners from surviving spouses. We are unpersuaded by appellant’s argument, and hold that the constitutional exception is not applicable in this case because appellant mounts an as-applied challenge to the statutes.

The scope of the constitutional exception is narrow. The constitutional exception only applies to facial challenges attacking “the constitutionality of the statute as a whole.” *Ray’s Used Cars*, 398 Md. at 652 (2007) (quoting *Goldstein v. Time-Out Family Amusement*, 301 Md. 583, 590 (1984)). If a statute is attacked “as a whole,” then a party may typically proceed directly to the courts for declaratory or equitable relief. *United Ins. Co. of America*, 450 Md. at 36. However, the constitutional exception does not always apply to attacks to statutes “as a whole.” See, e.g., *Montgomery County v. Broadcast Equities*, 360 Md. 438, 456-57 (2000) (holding that “where the only recognized avenue for relief is the administrative and judicial review proceedings, the claimant may not circumvent those proceedings by a declaratory judgment or equitable action even where the validity of an enactment on its face is the issue.”). As-applied challenges fall outside the scope of the exception. See *Goldstein*, 301 Md. at 590.

The Court of Appeals' decision in *Goldstein* is instructive. There, the owner and operator of Time-Out Family Amusement Centers, Inc. ("Time-Out") challenged the constitutionality of a statute. *Id.* at 585-86. The Court of Appeals held that unlike a facial challenge, Time-Out's challenge focused only on the statutory exemptions for recreational businesses, not for other exempted parties included in the statute. *Id.* at 590. The Court held that in order to make its as-applied constitutional challenge, Time-Out was first required to exhaust all available administrative remedies. *Id.* at 591-92.

In *Zorzit*, 221 Md. App. at 280, the President of Nick's Amusement, Zorzit, challenged the Comptroller's assessment of a deficiency tax against him and his business. After protesting the amount of the assessment before the Comptroller's Hearings and Appeals section, Zorzit appealed the matter to the Tax Court. *Id.* While the Tax Court appeal was pending, the Comptroller filed a lien against Zorzit. *Id.* Zorzit filed a petition for declaratory and injunctive relief in the circuit court, arguing that the Comptroller was not authorized to file the lien against him. *Id.*

On appeal, the Comptroller argued that Zorzit failed to exhaust his administrative remedies before the Tax Court. This Court held that Tax-Gen § 13-505 barred Zorzit's collateral action in the circuit court. *Id.* at 297. Addressing the constitutional exception to the exhaustion requirement, this Court held that the exception did not apply because Zorzit's case invoked the anti-injunction statute, Tax-Gen § 13-505, which barred a constitutional attack. *Id.* at 305.

Here, the constitutional exception does not apply to appellant’s claims for three reasons. First, appellant fails to mount a facial challenge to the statute “as a whole.” She challenges the constitutionality of Tax-Gen § 7-203(I)(1)(i) as applied to persons like her — surviving domestic partners, not the statute in full.³

Second, appellant’s claim was factual, as it was rooted in her status as a domestic partner under the statute. Thus, it should first be handled by the Tax Court, as it is well settled that “where a constitutional challenge to a statute . . . is intertwined with the need to consider evidence and render findings of fact, and where the legislature has created an administrative proceeding for such purpose, the matter should be initially resolved in the administrative proceeding.” *Insurance Commissioner of State of Md. v. Equitable Life Assur. Soc. of U.S.*, 339 Md. 596, 623, 664 (1995).

Third, as this Court stated in *Zorzit*, 221 Md. App. at 307, “the Tax-General Article provides the exclusive, primary remedies for tax-related disputes[.]” As such, appellant should have brought both her tax-related claim *and* her constitutional challenge before the Tax Court.⁴ *Ray’s Used Cars*, 398 Md. at 656. Had she done so, the Tax

³ Tax-Gen § 7-203 provides the following additional inheritance tax exemptions: surviving family members; grave maintenance; life insurance proceeds; certain nonprofit organizations; personal property of nonresident decedents; property not exceeding \$1,000.00; small estates; state, county, or municipal corporations; income after death; Holocaust reparations or restitution; and real property subject to a perpetual conversation easement.

⁴ Administrative agencies can hear and resolve constitutional issues. *See Holzheid*, 240 Md. at 398 (quoting *Ray’s Used Cars*, 398 Md. at 650-51); *Furnitureland*, 364 Md. at 138; and *Broadcast Equities*, 360 Md. at 451 n.8. It has also been well-established that when considering administrative exhaustion, we defer to an

Court would have been obligated to rule upon the constitutionality of the domestic partnership statutes to determine whether appellant should be exempted from paying the inheritance tax. We therefore hold that appellant's claims are barred by administrative exhaustion and decline to address the additional issues she presents in this appeal.

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

administrative agency's expertise, and if a challenge to a statute implicates an agency's interpretation or regulation of a statute, we will defer to the agency. *See United Ins. Co. of America*, 450 Md. at 33 (quoting *Frey v. Comptroller of Treasury*, 422 Md. 111, 138 (2011)).