

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 327

September Term, 2020

CRAIG MAHRLE

v.

BOARD OF COUNTY COMMISSIONERS
OF WASHINGTON COUNTY, MARYLAND,
et al.

Graeff,
Wells,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: February 11, 2021

*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.

Craig Mahrle, appellant, filed a complaint for declaratory judgment and injunctive relief, later amended, in the Circuit Court for Washington County against appellees, the Board of County Commissioners of Washington County, Maryland (“Board”) and John Krumpotich. Appellant alleged that a contract between appellees for the conveyance of County-owned land violated County and State laws. Upon motions filed by appellees, the court dismissed the amended complaint for failure to state a claim upon which relief may be granted.

Appellant noted an appeal from the order of dismissal, presenting numerous questions, which we have distilled into one: Did the circuit court err in dismissing the amended complaint?¹ Finding no error, we shall affirm the judgment of the circuit court.

¹ Appellant presents the following questions in his brief:

1. Did the Circuit Court err when it interpreted Washington County Code § 1-301(a) and Md. Code Ann. Local Gov’t § 12-401 as requiring only that the Board advertise an intent to sell at any time, and then could sell the land years later to a different buyer on different terms?
2. Did the Circuit Court err when it interpreted Washington County Code § 1-301(a) and Md. Code Ann. Local Gov’t § 12-401, as not requiring re-advertisement of a sale when, years later, the buyer changed?
3. Did the Circuit Court err when it interpreted Washington County Code § 1-301(a) and Md. Code Ann. Local Gov’t § 12-401, as not requiring re-advertisement of a sale when the terms of the sale materially changed?
4. May a Commission County, such as Washington County, violate State law and its own local law concerning advertising before it can sell public land?
5. Did the Circuit Court err when it determined that Appellant Mahrle’s amended complaint fails to state a claim because it did not allege[] facts which were sufficient, if proven, to support a cause of action for declaratory judgment?
6. Did the Circuit Court err when it determined that Appellant Mahrle’s amended complaint fails to state a claim for declaratory judgment because Mr. Mahrle’s rights were not alleged to have been affected?

(continued)

FACTS AND PROCEEDINGS

In 2016, Washington County acquired over 500 acres of land that was part of the former Fort Ritchie Military Installation (“the property”). In July 2018, the Board published a notice in the Herald Mail newspaper, advising of its intent to convey the property, which the County had determined to be “not needed for public use.” The notice, which ran for three successive weeks, invited anyone with an interest in the conveyance to submit written comments to the County before August 21, 2018, after which time the property would be sold. The notice did not identify a potential buyer or buyers and did not contain any sale-specific information.

In November 2019, the Board entered into an agreement with Mr. Krumpotich for the sale of the property for the price of \$1,712,500.00. The agreement was amended on January 16, 2020. The first amendment provided that the Board would consider continued ownership and obligations with respect to the roadways, water bodies, and public water

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7. Did the Circuit Court err when it determined that a declaratory judgment was improper because it could not “terminate the controversy” in an order in this case in a manner which would allow Appellant to purchase the property?
 8. Did the Circuit Court err when it held that a declaratory judgment was improper here because the facts contained in the amended complaint do not show “antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation”?
 9. Did the Circuit Court err in using the four prong balancing test applicable to temporary or preliminary injunctions and applying that test to a final injunction issue?
 10. Did the Circuit Court err in determining that Appellant’s lost opportunity to make a better offer than Appellee Krumpotich on the property being sold by the County is not a substantial and irreparable injury because it unrealistically assumes that Appellant would be the ultimate purchaser?

and sewer utilities on the property and agreed to extend the feasibility study period. Mr. Krumpotich agreed to increase the price to \$1,750,000.00. On March 3, after a public meeting at which the Board considered and approved a second amendment, the parties executed the second amendment. At that meeting, appellant submitted an “as-is” offer of \$1,525,000.00

The second amendment provided for an increase in price to \$1,850,000.00, and the Board agreed to continued ownership of the roads, water bodies, and utilities. The closing was scheduled for Monday, April 6, 2020. The closing did not and has not occurred because of the pendency of this lawsuit.

In his complaint, appellant alleged that the Board failed to comply with the public notice requirements set forth in the Washington County Code (the County Code) § 1-301(a). It provides, in pertinent part:

(1) The County Commissioners may lease, sell, at either public or private sale, and convey or otherwise dispose of and convey any interest in real estate held by the County Commissioners and no longer needed for public use.

(2) The County Commissioners’ intent to sell, dispose of, or convey, except in the case of a conveyance made between the county and any federal, state, or local government, shall be advertised in a newspaper of general distribution in the county, once a week for 3 successive weeks.

Appellant alleged that the second amendment to the agreement for the sale of the property “modified the boundaries” of the property being conveyed, and, therefore, the Board had a “legal obligation” to advertise the “new proposed transaction.” Appellant requested a declaration “construing Washington County law and its application to” the

agreement for the sale of the property. In addition, appellant sought to enjoin transfer of the property to Mr. Krumpotich “so as to allow [appellant] an opportunity to close on the purchase of the land after the County complies with its legal obligations [under County Code § 1-301(a)(2)].”

The Board filed a motion to dismiss the complaint on the ground that the complaint failed to state a claim upon which the requested relief could be granted. The motion to dismiss was supported by the affidavit of Jeffrey Cline, president of the Board, and accompanying exhibits, demonstrating that the following notice of intent to convey the property was advertised in the Herald Mail newspaper for three successive weeks: on July 31, August 7 and August 14, 2018:

NOTICE is hereby given that the Board of County Commissioners of Washington County, Maryland, (the “County”) in accordance with Section 1-301, Code of Public Local Laws of Washington County, Maryland, intends to convey a total of 528 acres of land, more or less, located within the Cascade Development District and being the remainder of the former Fort Ritchie Military Reservation, which is part of the property acquired by the County on September 20, 2016 (the “Property”).

It has been determined by the County that the above-described parcel of land is not needed for public use.

All persons who may have an interest in this conveyance may submit comments in writing to Todd Moser, Real Property Administrator, 80 W. Baltimore Street, Hagerstown, Maryland, before August 21, 2018, the date on or after which said conveyance will be made.

Mr. Krumpotich also filed a motion to dismiss the complaint, adopting the arguments made by the Board. As additional grounds for dismissal, Mr. Krumpotich asserted that the complaint (1) failed to set forth a factual basis establishing that appellant

had standing to seek declaratory relief and (2) failed to allege “immediate, substantial, and irreparable injury” that would entitle him to injunctive relief.

Before the motions to dismiss were ruled on, appellant filed an amended complaint. Appellant alleged that, in addition to violating the notice requirements of County Code § 1-301(a), the Board failed to comply with Md. Code (2013 Repl. Vol.), Local Government Article (“LG”), § 12-401. In pertinent part, that section provides that the governing body of a county may “sell surplus property at public sale, after advertising the sale for at least 20 days[.]” LG § 12-401(b)(3). Appellees filed motions to dismiss the amended complaint, renewing the arguments made in their initial motions.

Circuit court opinion

The circuit court held a telephonic hearing on the motions to dismiss on May 4, 2020.² Appellant argued that he was entitled to a declaratory judgment holding that the Board was required to give public notice of the proposed sale to Mr. Krumpotich after the second amendment and that it failed to do so. He argued that he was deprived of a right to purchase the property. Thus, he suffered irreparable injury and was entitled to an injunction prohibiting the conveyance of the property to Mr. Krumpotich.

Appellees argued that LG § 12-401 and County Code § 1-301(a) did not require notice other than the notice given in July and August 2018. They also argued that appellant lacked standing to seek declaratory relief and failed to allege an actual controversy within

² The hearing was held by telephone due to the COVID-19 emergency.

the meaning of the Maryland Uniform Declaratory Judgments Act, Maryland Code, Courts and Judicial Proceedings Article (CJP), § 3-401, *et seq.*

Although documents were attached to the amended complaint, the circuit court treated the motion as a motion to dismiss, not as a summary judgment motion.³ The court issued a written opinion and order dismissing the amended complaint upon a finding that appellant failed to allege facts sufficient to state a cause of action for either declaratory or injunctive relief.

CONTENTIONS ON APPEAL

All parties agree that the circuit court granted motions to dismiss and did not convert the motions to summary judgment motions. Appellant’s primary contention is that the circuit court erred in its interpretation of the legislative provisions. He also contends that he (1) is entitled to a declaratory judgment because the Board’s intended sale is an *ultra vires* act and (2) alleged irreparable injury sufficient to warrant injunctive relief. Appellees disagree.

STANDARD OF REVIEW

The Court of Appeals has explained a trial court’s decision on a motion to dismiss as follows:

Considering a motion to dismiss a complaint for failure to state a claim upon which relief may be granted, a court must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may

³ See *State Center, LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 497 (2014) (a court may consider the allegations in the complaint and the incorporated supporting exhibits) (quoting *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643-44 (2010)).

reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action for which relief may be granted. Consideration of the universe of “facts” pertinent to the court’s analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.

State Center, LLC v. Lexington Charles Ltd. P’ship, 438 Md. 451, 496-97 (2014) (quoting *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643-44 (2010)).

“When reviewing the grant of a motion to dismiss, the appropriate standard of review ‘is whether the trial court was legally correct.’” *D.L. v. Sheppard Pratt Health System, Inc.*, 465 Md. 339, 350 (2019) (citations omitted). “Therefore, we review the grant of a motion to dismiss *de novo*. We will affirm the circuit court’s judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised.” *Id.* (citation and internal quotation marks omitted).

DISCUSSION

1. Dismissal of Count 1 - Declaratory Judgment

“A declaratory judgment proceeding is a vehicle by which a person may obtain a judicial declaration to ‘afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.’” *Baltimore City Police Dep’t v. Esteppe*, 247 Md. App. 476, 504 (2020) (quoting § 3-402 of the Courts and Judicial Proceedings Article (“CJP”)) (additional citation and some internal quotation marks omitted), *cert. granted* __ Md. __ (December 7, 2020). As the Court of Appeals has explained, “the declaratory judgment process is not available to decide purely theoretical questions or questions that may never arise, [] questions which have become moot, or merely abstract questions[.]” *State v. G*

& *C Gulf, Inc.*, 442 Md. 716, 721 (2015) (quoting *Hamilton v. McAuliffe*, 277 Md. 336, 339-40 (1976)) (internal citations omitted). Accordingly, “[a] court cannot consider a declaratory judgment action unless the underlying controversy is justiciable.” *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 340 (2020) (citing *State Center*, 438 Md. at 591). “A declaratory judgment is not justiciable if a party lacks ‘standing’ to bring a suit.” *Baltimore Steam Co. v. Baltimore Gas & Elec. Co.*, 123 Md. App. 1, 15 (1998), vacated and remanded on other grounds, 353 Md. 142 (1999).

“Although it is ‘rarely appropriate’ to dismiss a declaratory judgment action, dismissal is proper ‘when the party seeking such judgment has no standing and there is no justiciable controversy properly before the court.’” *Kendall v. Howard County*, 431 Md. 590, 602 (2013) (quoting *Roper v. Camuso*, 376 Md. 240, 246-47 n. 3 (2003)). That is because “the addressing of non-justiciable issues would place courts in the position of rendering purely advisory opinions, a long forbidden practice in this State.” *120 West Fayette Street, LLLP v. Mayor and City Council of Baltimore City*, 413 Md. 309, 356 (2010) (quoting *Hatt v. Anderson*, 297 Md. 42, 46 (1983)). “[T]he test of the sufficiency of a complaint for declaratory judgment is not whether it shows that the plaintiff is entitled to the declaration of rights or interest in accordance with his theory, but whether he is entitled to a declaration at all[.]” *Getty v. Carroll County Bd. of Elections*, 399 Md. 710, 745 (2007) (quoting *Shapiro v. Board of County Comm’rs*, 219 Md. 298, 302-03 (1959)) (internal brackets omitted).

Standing is a concept that “refers to whether the plaintiff has shown that he or she is entitled to invoke the judicial process in a particular instance[.]” *Pizza di Joey*, 470 Md.

at 343 (quoting *State Center*, 438 Md. at 502). In order to have standing to bring a declaratory judgment action, there must be “a legal interest such as one of property, one arising out of a contract, one protected against tortious invasion, or one founded on a statute which confers a privilege.” *Committee for Responsible Dev. on 25th St. v. Mayor & City Council of Baltimore*, 137 Md. App. 60, 72 (2001) (citations and internal quotation marks omitted).

The entitlement to a judicial declaration of rights or interest is governed by CJP § 3-406, which provides as follows:

Right of person to declaration of rights, status, or legal relations

Any person interested under a deed, will, trust, land patent, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

Here, the relief requested by appellant was for the court to “construe the question of the meaning of [County Code § 1-301(a) and LG § 12-401] and the application of these code provisions to the contract [between appellees] as amended.” The amended complaint, however, is devoid of allegations that would demonstrate that appellant is entitled to such a declaration. The only facts alleged regarding appellant’s status and interest are that he is a resident of another county, and that he made an offer on the property several months after the Board agreed to sell the property to Mr. Krumpotich. Even assuming the truth of those facts, and considering them in the light most favorable to appellant, as the non-moving

party, they do not demonstrate that appellant had any legal interest in the agreement between the Board and Mr. Krumpotich, or any other right, that would entitle him to petition the court for an order construing the validity of or declaring his rights under that agreement.⁴ Furthermore, the vague and conclusory statement in paragraph 19 of the amended complaint, alleging that appellant’s “rights, status, or other legal relations are affected by a statute, municipal ordinance, administrative rule or regulation, or contract,” without more, is insufficient to state a claim for declaratory judgment.⁵ See *State Center*, 438 Md. at 497 (“The well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice” (citation omitted)). Accordingly, we conclude that the court did not err in dismissing the count for declaratory judgment.

⁴ Appellant’s reliance on *Pressman v. D’Alesandro*, 211 Md. 50 (1956), in support of his claim that he is entitled to declaratory judgment, is misplaced. In that case, the Court of Appeals noted that a taxpayer has standing to request declaratory relief from a court where an illegal or *ultra vires* action of a public official or an administrative agency “may injuriously affect the taxpayer’s rights and property.” *Id.* at 54. Appellant, who, according to the amended complaint, is a resident of Frederick County, did not allege that he owned property in Washington County. Accordingly, his amended complaint was insufficient to establish that he had taxpayer standing. See *120 West Fayette St., LLLP v. Mayor and City Council of Baltimore*, 407 Md. 253, 267 (2009) (explaining that “in order to establish taxpayer standing in Maryland, a taxpayer must allege two things: 1) an action by a municipal corporation or public official, which is illegal or *ultra vires*, and 2) that the action may injuriously affect the taxpayer’s property, meaning that it reasonably may result in a pecuniary loss to the taxpayer or an increase in taxes.”)

⁵ Appellant claims that he has standing because he has a “right to attempt to purchase the property[.]” He has not, however, established any legal or contractual right to attempt to purchase the property.

We note that, in dismissing the declaratory judgment action, the circuit court expressly disagreed with the statutory interpretation upon which the action was based. The court commented that there was nothing in the plain language of LG § 12-401 or County Code § 1-301(a) that required the sale to be re-advertised. Although the court dismissed the action based on insufficiency of the pleadings, rather than entering a declaratory judgment as a matter of law, we shall exercise our discretion to reach the statutory interpretation issue. *See* Md. Rule 8-131(a) (appellate courts may decide an issue not decided by the trial court “if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.”)

Local ordinances and State statutes “are interpreted under the same canons of construction[.]” *Young v. Anne Arundel County*, 146 Md. App. 526, 573 (2002).

A cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. The primary source of legislative intent is . . . the language of the statute itself. In interpreting a statute, we assign the words their ordinary and natural meaning. Generally, we will not divine a legislative intention contrary to the plain language of a statute or judicially insert language to impose exceptions, limitations or restrictions not set forth by the legislature. Similarly, we neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words the [l]egislature used or engage in a forced or subtle interpretation in an attempt to extend or limit the statute’s meaning.

Id. at 574 (cleaned up).

We agree with appellant that LG § 12-401 and County Code § 1-301(a) are not inconsistent but disagree with his interpretation of the provisions. According to the plain language of both provisions, the Board had to give notice of its intent to sell the property

at public sale and advertise the “intent to sell” in a newspaper once a week for 3 successive weeks. The Board complied with those provisions.

With respect to appellant’s argument that the notice cannot exist in perpetuity, we agree. The absence of a stated time limit does not mean that plain language cannot be implemented. Although there is no time limit in either legislative provision, a reasonable time may be implied. *See Parker v. Board of Election Supervisors*, 230 Md. 126, 130 (1962). In this case, based on the allegations, as a matter of law, the operative events occurred within a reasonable time. Accordingly, we affirm the circuit court’s interpretation of the legislative provisions.

2. Dismissal of Count II - Injunction

An injunction is an order “commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience.” *El Bey v. Moorish Science Temple of America, Inc.*, 362 Md. 339, 353 (2001) (citations omitted). Injunctive relief is considered “an extraordinary remedy[.]” *B & P Enterprises v. Overland Equipment Co.*, 133 Md. App. 583, 631 (2000) (citation omitted). It is reserved “for the protection of property or other rights against actual or threatened injuries of a substantial character which cannot be adequately remedied in a court of law.” *El Bey*, 362 Md. at 353-54 (quoting *Coster v. Dep’t of Personnel*, 36 Md. App. 523, 525-26 (1977)).

Parties may not seek an injunction “to restrain acts, actual or threatened, merely because they are illegal or transcend constitutional powers, unless it is apparent that irreparable injury will result.” *Id.* at 354 (quoting *Coster*, 36 Md. App. at 526). “The mere assertion that apprehended acts will inflict irreparable injury is not enough. The

complaining party must allege and prove facts from which the court can reasonably infer that such would be the result.” *Id.* (quoting *Coster*, 36 Md. App. at 526). *See also Smith v. Shiebeck*, 180 Md. 412, 421 (1942) (“[T]he mere allegation of a complainant that he will suffer irreparable damage is not of itself a sufficient foundation upon which to base injunctive relief, but facts must be stated which will satisfy the court that the complainant’s apprehension is well founded.”)

Appellant’s cause of action seeking an injunction to stall the sale of the property to Mr. Krumpotich and compel the Board to readvertise the sale consisted of the following two paragraphs:

24. [Appellant] incorporates the foregoing allegations as if set forth fully herein.

25. [Appellant] will be irreparably injured if Mr. Krumpotich and the County are able to close the conveyance of the Property pursuant to the Contract as amended, without allowing [Appellant] the opportunity to participate after the required advertising.

The bald allegation of irreparable injury is patently insufficient to state a claim for injunctive relief. Nor do any of the foregoing paragraphs, which were incorporated by reference, allege the nature or source of the alleged harm. Accordingly, we find no error in the dismissal of the claim for injunctive relief.

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