

Circuit Court for Charles County
Case No. 08-C-13-002686 CN

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 416

September Term, 2016

JOHN C. MCGUIGAN

v.

CHARLES COUNTY COMMISSIONERS

Woodard, C.J.,
Kehoe,
Shaw Geter,

JJ.

Opinion by Kehoe, J.

Filed: April 17, 2018

*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. *See* Md. Rule 1-104.

John C. McGuigan was a Deputy Sheriff with the Charles County Sheriff's Department. In 2011, the Charles County Sheriff's Disability Review Board determined that he had a work-related permanent partial disability, and awarded him disability retirement benefits. The County, which administers the retirement plan for the Sheriff's Department, withheld payments to McGuigan for over a year. It did so on the basis that it had already paid him over \$37,000 in workers' compensation benefits for the same condition. Based on its interpretation of the plan language, the County believed it was entitled to recoup the past payments because they were related to the same underlying injury.

McGuigan later filed suit in the Circuit Court for Charles County, seeking a declaratory judgment as well as monetary damages based on allegations of breach of contract and conversion. The circuit court dismissed the conversion and declaratory judgment claims, and ultimately granted the County's motion for summary judgment on the breach of contract claim.

On appeal, McGuigan argues that the County had no right to reduce his retirement benefits by the amount he had already received in workers' compensation benefits. He presents several contentions in support of his position that we'll discuss later in this opinion.

The County has filed a conditional cross appeal. It contends that the circuit court should have dismissed or granted its motion for summary judgment for McGuigan's claims of conversion and breach of contract on grounds different from those the court

relied upon. Specifically, the County argues that the circuit court should have dispensed with the conversion and breach of contract claims on the basis that McGuigan failed to exhaust his administrative remedies, and that the conversion claim was barred because McGuigan failed to satisfy the notice requirement of the Local Government Tort Claims Act.

We affirm the judgment of the circuit court.

Background

In his years of service as a deputy sheriff, McGuigan developed a work-related heart condition. He filed a claim with the Workers' Compensation Commission. The Commission initially found that McGuigan had been temporarily totally disabled for a month in 2004, and awarded him \$740 per week for that period as well as causally related medical expenses and counsel fees. After a second hearing, the Commission found that McGuigan had a permanent partial disability and was awarded \$247 per week for 75 weeks. Finally, in 2010, McGuigan was awarded additional workers' compensation benefits after his health worsened.

On May 11, 2011, the Charles County Sheriff's Department Disability Review Board determined that McGuigan could no longer perform his duties because of his work-related heart condition. The Board awarded him the maximum retirement benefit to which he was entitled, namely, 50% of his salary. However, the Board offset his retirement benefit based on a provision of the Charles County Sheriff Department's Retirement Plan.

The retirement plan language provides (emphasis added):

If a Participant... reaches a Termination Date by reason of a Permanent Partial Disability, incurred as a result of an accident or injury which has been determined to have been sustained in the line of duty, the participant shall be entitled to receive an annual disability retirement income equal to:

(1) a percentage, as determined by the Disability Review Board, which shall be dependent on the extent and degree of the Participant's disability... multiplied by the Participant's Final Average Earnings for the three years prior to the Participant's Termination Date, reduced by

(2) the following offsetting income:

* * *

(b) 100% of the amount the Participant receives under the Maryland Worker's Compensation Act as compensation for the accident or injury underlying the Participant's Permanent Partial Disability. . . .

In June, 2011, the Human Resources Department for the Charles County Commissioners sent McGuigan an option election form and informed him that, while his annuity had a start date of June 1, 2011, his monthly retirement benefit was subject to an offset equal to the total paid to him pursuant to his workers' compensation awards. Therefore, he would not receive any retirement benefits until a partial payment in July, 2012, with the first full payment to come in August, 2012. McGuigan signed and returned the form. However, his attorney sent a letter to the County in December, 2011 protesting the County's decision to withhold benefits and requesting that McGuigan receive full payments immediately. The County did not comply with this request; instead, and consistent with the schedule laid out in the option election form, the County made no

pension payments to McGuigan until July, 2012, when it made a partial payment. The County made full payments thereafter.

McGuigan filed suit against the County in the Circuit Court for Charles County on October 4, 2013. His complaint contained three claims. The first was for a declaratory judgment, requesting the court to determine the specific amount of offsets that the County was entitled to claim. McGuigan conceded that he could not collect disability retirement benefits and his workers' compensation benefits at the same time, but protested the County's interpretation of the plan that allowed it to withhold benefits that were received prior to the retirement determination in May, 2011. The second count was for breach of contract, on the basis that the County had breached its contract by withholding McGuigan's benefits after he had paid premiums and contributed to the plan during his time as a deputy sheriff. The final claim was for conversion. McGuigan asserted that the County arbitrarily and capriciously withheld his payments without his permission, and that its calculation of the withholdings was incorrect.

The County filed a motion to dismiss or, in the alternative, for summary judgment. It contended that, by filing suit against the County instead of seeking review of the Disability Review Board's determination, McGuigan had failed to exhaust his administrative remedies. The County also took the position that the retirement plan is not a contract, and that even if it were, its terms required the County to offset McGuigan's pension payments by the amount of the workers' compensation benefits that he had

already received. Finally, the County argued that the conversion claim was barred by the one year statute of limitations in the Tort Claims Act.

After a hearing, the trial court issued an opinion and order in October, 2014 that disposed of two of the three claims. The court dismissed the declaratory judgment claim on the ground that McGuigan had failed to exhaust his administrative remedies by not seeking judicial review of the Disability Review Board's decision. The court dismissed the conversion claim for failure to state a claim upon which relief could be granted. The court explained that an element of the tort of conversion is that the money sought to be recovered must be specific and identifiable, while the retirement funds McGuigan wanted to recover were comingled in the County's general fund.

The court denied the County's motion with regard to the breach of contract claim. The court concluded that there was a genuine dispute of material fact over whether the retirement plan was a contract and whether the language that the County would offset money that the plan participant "receives" applied prospectively or retroactively to payments under the Workers' Compensation Act. Therefore, that claim survived the motion.

The County filed a motion for reconsideration, arguing that the breach of contract claim should have been dismissed due to McGuigan's failure to exhaust his administrative remedies, but that motion was denied.

The County then filed a motion for summary judgment contending that the remaining claim for breach of contract was barred by the one year statute of limitations for contract

actions against the County. *See* Md. Code Ann., Courts and Judicial Proceedings Article (“CJP”) § 5-5A-02(c).¹ The County pointed out that McGuigan filed his complaint in October, 2013, while the County withheld payments between June, 2011 and July, 2012, placing his suit outside the one year time period. The trial court heard arguments on the County’s summary judgment motion, and then granted the motion on that basis.

The Standard of Review

Motions to Dismiss for Failure to State a Claim

We review a trial court’s decision to dismiss a claim *de novo*. *Morris v. Goodwin*, 230 Md. App. 395, 400 (2016), *cert. dismissed*, 451 Md. 587 (2017). Our review is limited to the complaint itself as well as any incorporated exhibits, and we construe the well-pleaded facts and allegations therein in a light most favorable to the plaintiff. *Id.* at 401. We may ““affirm a 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.”” *Puppolo v. Adventist Healthcare, Inc.*, 215 Md. App. 517, 530 (2013) (quoting *Barnes v. Greater Baltimore Medical Center*, 210 Md. App. 457, 471 (2013)).

¹ CJP § 5-5A-02(c) states:

- (c) A claim is barred unless the claimant files suit within the later of 1 year after:
 - (1) The date on which the claim arose; or
 - (2) The date of completion of the contract that gave rise to the claim.

Motions for Summary Judgment

The decision to grant a motion for summary judgment is reviewed *de novo* as well. *Crystal v. Midatlantic Cardiovascular Associates, P.A.*, 227 Md. App. 213, 223 (2016). “In conducting that assessment, we consider the facts and all reasonable inferences that may be drawn from those facts, in a light most favorable to the nonmoving party.” *Id.* While our review is generally limited to the grounds the trial court relied upon, the decision may be affirmed ““on a ground not relied upon by the circuit court if the alternative ground is one upon which the circuit court would have no discretion to deny summary judgment.”” *Estate of Adams v. Cont’l Ins. Co.*, 233 Md. App. 1, 24 (2017).

Finally, “whether a plaintiff must exhaust administrative remedies prior to bringing suit... is a legal issue on which no deference is due to the lower court and which an appellate court may address even if a lower court did not.” *Falls Road Community Association v. Baltimore County*, 437 Md. 115, 134 (2014).

Analysis

1. The Declaratory Judgment Claim

McGuigan’s main contention in this appeal is that the trial court had the ability to rule on his declaratory judgment claim and should have done so. He points to CJP § 3-406, which provides:

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.

McGuigan suggests that the retirement plan is a contract or, in the alternative, that he is an individual who is impacted by the regulations regarding retirement benefits.

Therefore, he contends that he is entitled to declaratory relief regardless of any potential administrative remedies that might have been available. We do not agree with this part of McGuigan's argument. Maryland law is clear that a party must exhaust an exclusive or a primary administrative remedy before seeking relief from the court. *See, e.g., Falls Road Community Ass'n v. Baltimore County*, 437 Md. 115, 136 (2014); *Priester v. Baltimore County, Maryland*, 232 Md. App. 178, 193 (2017), *cert. denied sub nom. Priester v. Baltimore Co.*, 454 Md. 670 (2017). We turn to whether there was an exclusive or primary administrative remedy applicable to McGuigan's claim.

As to this, McGuigan argues that he was not required to pursue the remedy the County raises, namely an appeal from the Disability Retirement Board's order, because he was not aggrieved by that order. Rather, he seeks to enforce the Board's order against the County. He posits that there is no administrative mechanism for enforcement of the Board's order, so the only possible remedy was to file the lawsuit which is the subject of these proceedings. We agree with McGuigan's characterization of his situation.

The Disability Review Board regulations provide no mechanism by which parties can administratively challenge the implementation of its decisions. Likewise, neither the retirement plan nor its numerous amendments address how a plan participant would enforce an award against the County Commissioners. The provision that comes closest to

being relevant is § 13.9, which states: “[i]f any fact pertaining to eligibility for or amounts of benefits payable under the Plan to a Participant or other payee has been misstated, or in the event of a clerical error, the benefits will be adjusted on the basis of the correct facts.” But this provision does nothing more than to provide that an error in the amount of benefits paid will be adjusted once the underlying facts are straightened out. It does not identify who is to straighten out the facts: a judge, an administrator, or an administrative board. In short, § 13.9 does not establish an administrative process to enforce the Board’s decision.

With that said, we will nonetheless affirm the trial court’s judgment, albeit for a different reason: his claim for declaratory relief is moot and, indeed, was moot even before this action was filed. McGuigan sought a declaration that the County was not entitled to deduct his workers’ compensation benefits from his monthly disability payments. However, the County started making full payments to him in August, 2012. He filed this action more than one year later. By that time, the County was making full payments to him. Because a declaratory judgment would have no effect on McGuigan’s right to receive payments at the time the suit was filed or thereafter, it would have been inappropriate for the court to grant declaratory relief. *See, e.g., Hanover Investments, Inc. v. Volkman*, 455 Md. 1, 15, (2017) (“A declaratory judgment action may not be used to resolve abstract questions or questions that are moot or that may never arise.”). This does not mean that McGuigan was without legal recourse—his claims for breach of contract and/or conversion, if otherwise viable, would provide a means by which he could recover

the money that he asserts is his due. (We’ll discuss the parties’ contentions as to these claims shortly.)

There is another problem with McGuigan’s request for a declaratory judgment. Because there is no dispute about the amount of benefits that McGuigan will receive in the future, a declaratory judgment would be relevant to the parties only as a basis for McGuigan to seek ancillary relief in the form of a money judgment against the County in the amount of the payments that he asserts the County wrongfully withheld. This is the same relief that he seeks in his conversion and breach of contract claims. As we will explain, those claims are barred by their respective statutes of limitations, and a party is not able to recover monetary damages as ancillary relief to a declaratory judgment where the statute of limitations for the underlying relief has run. *See Murray v. Midland Funding*, 233 Md. App. 254, 263 (2017) (“[W]hen additional relief is sought ancillary to a declaratory judgment action, the court will look to the remedy sought to see if that relief is at law or at equity. If it is at law, the court will analyze whether that ancillary relief is barred by the statute of limitations[.]”). McGuigan may not achieve indirectly what he cannot pursue directly.

2. The Breach of Contract Claim

At trial, the court considered two questions regarding McGuigan’s breach of contract claim. The first question was whether the retirement plan was a contract: McGuigan asserted that the plan was a contract and the County took the position that the plan wasn’t a contract. The second was whether or not the calculation of retirement benefits to offset

funds that a retiree “receives” applies to present monies awarded under the Workers’ Compensation Act or extends back to include payments made prior to the individual becoming eligible for retirement benefits. Ultimately, the trial court found that the breach of contract claim was barred by the statute of limitations, as a contract action against the County must be brought within one year of either the date the claim arose or the contract was completed.

We will assume for the purposes of analysis that the County breached a contract when it failed to make any disability retirement payments from June 1, 2011 through June 1, 2012, and then made only a partial payment in July, 2012. We nonetheless conclude that the trial court was correct in granting summary judgment on the grounds that the breach of contract claim was barred by the statute of limitations.

The relevant statute is CJP § 5-5A-02, which addresses contract actions against counties. It reads in pertinent part:

- (c) A claim is barred unless the claimant files suit within the later of 1 year after:
 - (1) The date on which the claim arose; or
 - (2) The date of completion of the contract that gave rise to the claim.

Normally, a retiree’s rights to receive disability retirement benefits ends at the retiree’s death. In light of this, a literal reading of § 5-5A-02(c) would suggest that McGuigan could file a breach of contract action at any point during the remainder of his life and, indeed, his personal representative could file an action within a year of the date of his death. But the statute is not nearly so generous in this particular case.

The County argues that, if McGuigan’s right to receive monthly payments is contractual, then the contract is an installment contract, which means that McGuigan had a separate cause of action for each monthly payment that the County didn’t make. As a corollary, a separate statute of limitations began to run runs for each withheld payment. *See Avery v. Weitz*, 44 Md. App. 152, 154 (The common law rule that “the statute of limitations begins to run on each individual installment as it becomes due under a note is the firmly entrenched law in Maryland.”); *Ely v. Science Applications International Corp.*, 716 F. Supp. 2d 403, 407–08 (D. Md. 2010) (An obligation to pay rent on a monthly basis was an installment contract, so “any damages that resulted from breaches prior to the [statute of limitations] period preceding the initiation of this suit are barred.”). We believe that the same principle is applicable in the present case.

When we consider the retirement plan as an installment contract, there was not a single limitations period but rather thirteen separate ones, each commencing on the date that a full payment wasn’t made. The last breach occurred when the County made a partial payment in July 1, 2012. The limitations period for this last claim expired in July, 2013. McGuigan filed his complaint in October, 2013. By that time, the one year limitations period on contract claims against the County had expired. The trial court was correct in its determination that the breach of contract claim was barred by CJP § 5-5A-02(c).

3. The Conversion Claim

McGuigan based his conversion claim on what he described as the arbitrary and capricious nature of the County’s decision to withhold payments, which he stated was done without his permission. The trial court dismissed the conversion claim for failing to state a claim upon which relief could be granted. The court was correct.

“Conversion is an intentional tort that requires an exertion of ownership or dominion over another's personal property in denial of or inconsistent with the owner's right to that property.” *UBS Financial Services v. Thompson*, 217 Md. App. 500, 514 (2014), *aff’d*, 443 Md. 47 (2015). As we noted in *UBS Financial*, an action for conversion is typically not a means to recover money, but ““if the monies [are] alleged to have been converted are specific segregated or identifiable funds[,]’ the action may lie.”” *Id.* at 515 (quoting *Lasater v. Guttman*, 194 Md. App. 431, 447 (2010)) (some citation marks omitted). For example, in *Sage Title Group, LLC v. Roman*, 455 Md. 188, 207 (2017), *reconsideration denied* (Sept. 21, 2017), the Court of Appeals held that funds held in an escrow account were sufficiently identifiable as to give rise to a conversion claim. But there is nothing in the record to suggest that the money that McGuigan sought was held by the County in any type of separate account, and we agree with the trial court that money held in the County’s general fund is not subject to a conversion claim.²

² The County raises an additional point in its brief, arguing that the conversion claim was also barred by CJP § 5-304, which provides notice requirements for the Local Government Tort Claims Act. The version of the Act that was in effect between 2009 and

In conclusion, McGuigan's request for declaratory relief is moot; the breach of contract action was not filed within a year of the alleged breaches and was therefore barred by the statute of limitations; and the conversion claim was inapposite to the facts presented in the record that was before both the trial court and this Court.

THE JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.

2014, when the relevant events took place, provided that tort claims against a unit of local government, such as the County, is barred unless the claimant provides written notice of the claim within 180 days of the date that the claim arose. (The 180 day period has since been extended to one year. *See* 2016 Maryland Laws Ch. 624.)

It's not necessary for us to address this contention because, even if the LGTCA notice requirement had been satisfied, McGuigan's conversion claim would still have been unsuccessful.