Circuit Court for Baltimore City
Case No. 24C20000970

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 460

September Term, 2020

STANDARD CONSTRUCTION & COATINGS, LLC.,

v.

BELMORE PROPERTIES

Leahy,
Zic,
Ripken,

JJ.

Opinion by Leahy, J.

Filed: October 22, 2021

The dispute between the parties to this case began with a breach of contract action that was filed in the District Court of Maryland for Baltimore City in May of 2017. Belmore Properties, LLC., appellee, alleged that Standard Construction & Coatings, LLC, appellant, had breached a construction contract to improve property owned by Belmore. After the complaint in that case was filed, the parties apparently discussed the possibility of resolving the dispute through arbitration. The discussed arbitration never occurred, and Standard Construction filed a motion to compel Belmore to submit to arbitration. On March 5, 2019, the district court stayed the motion to compel and ordered the parties to submit the dispute to arbitration, with the condition that if they failed to begin arbitration by May 6, 2019, then their right to arbitration would be waived. The deadline passed before the parties were able to reach an agreement on how to proceed.

While the district court case was still in progress, Standard Construction filed the action underlying the present case against Belmore in the Circuit Court for Baltimore City. The operative complaint is captioned: "Amended Petition to Compel Arbitration and Complaint for Declaratory Judgment." The complaint asked the circuit court to compel Belmore to submit to arbitration, and to issue a declaratory judgment holding that Belmore had forfeited its claims still being litigated in the district court. The basis for the request for declaratory judgment was that, according to Standard Construction, its "right to this inexpensive alternative [of arbitration] has been thwarted by [Belmore's] wrongful and unjustified attempt to ignore [its] promise [to arbitrate] and impose the costs of a Court case upon [Standard Construction]."

Belmore filed a motion to dismiss the circuit court action, and the court held a hearing on the motion. After arguments by counsel, the court expressed that it would grant the motion to dismiss because the court had no authority to relitigate the district court's interlocutory stay of a motion to compel arbitration while the district court case was still ongoing. The court explained further that it had no authority to issue a declaratory judgment on issues that were already being litigated between the same parties in another Maryland court. The circuit court declared that it was taking judicial notice of the district court proceedings, and that its decision to grant the motion to dismiss was based solely on the ongoing proceedings in the district court.

Standard Construction filed a timely appeal and presents an abundance of matters for our review.[1] We derive from the questions presented only one that is dispositive of this

[1] Standard Construction listed its questions presented in its brief as follows:

"1. Did the [c]ircuit [c]ourt err in dismissing the Plaintiff's Petition to Compel Arbitration by mischaracterizing same as an appeal, erroneously treating same as an appeal of a denial of a motion to compel arbitration, failing to hold that breaches of settlement agreements are immediately appealable, failing to properly review the undisputed facts, and *sua sponte* taking judicial notice of "proceedings" without specifying same, without allowing Plaintiff to be heard as to the propriety of taking judicial notice and/or challenge the tenor of the matter noticed, despite request for the opportunity, and without providing the opportunity to provide key, relevant omitted document related to the prior proceedings?

2. Did the [c]ircuit [c]ourt err in dismissing the Plaintiff's Complaint for Declaratory Judgment when no Motion to Dismiss same was pending, no notice was provided that dismissal of this Count was to be at issue at the hearing, the Declaratory Relief sought was to declare a forfeiture and fell within the exception to the general rule precluding a Declaratory Judgment action when a related action is pending, and erroneously equating this Count as appeal of a denial of a motion to compel

(Continued)

appeal:[2] Did the circuit court err by granting the motion to dismiss Standard Construction's petition to compel arbitration and complaint for declaratory judgment?

We affirm the circuit court's decision to grant the motion to dismiss. Standard Construction's attempt to reframe its challenge as an original action in the circuit court does not alter the fact that Maryland law provides no basis for an interlocutory appeal of an order staying a motion to compel arbitration. Standard Construction's "petition to compel arbitration" is functionally equivalent to a petition for a writ of mandamus to compel the district court to modify its arbitration order. Regardless, we reach the same conclusion, which is that Standard Construction must wait to assert its challenge in an appeal from a final judgment of the district court. *See City of Seat Pleasant v. Jones*, 364 Md. 663, 673 (2001) ("Mandamus . . . is not a substitute for appeal[.]" (quoting *Goodwich v. Nolan*, 343 Md. 130, 144 (1996)) (cleaned up)). Concomitantly, we must apply the principle that Maryland courts will not entertain a declaratory judgment action when the same issues could be resolved between the same parties in another action already pending

> arbitration, failing to hold that breaches of settlement agreements are immediately appealable, failing to properly review the undisputed facts, and *sua sponte* taking judicial notice of "proceedings" without specifying same, without allowing Plaintiff to be heard as to the propriety of taking judicial notice and/or challenge the tenor of the matter noticed, despite request for the opportunity, and without the opportunity to provide omitted documents related to the prior proceedings?"

[2] We do not address the issues raised relating to the circuit court proceedings because the procedural deficiencies in this case render any possible errors harmless. *CSX Transp., Inc. v. Pitts*, 203 Md. App. 343, 390 (2012) (denying relief for harmless errors). We also decline to address all issues the parties raise relating to the district court proceedings because they are not properly before this Court.

before another court. *Hanover Investments, Inc. v. Volkman*, 455 Md. 1, 17 (2017). We hold, therefore, that the circuit court correctly dismissed the petition to compel arbitration and the complaint for declaratory judgment.

BACKGROUND

Proceedings in the District Court

Belmore Complaint

In May 2017, Belmore filed a complaint against Standard Construction for breach of contract in the District Court of Maryland for Baltimore City. In August 2017, Belmore agreed to voluntarily dismiss the suit without prejudice so that the parties could resolve their dispute through arbitration. Under circumstances that are not entirely clear from the record, the arbitration negotiations broke down, and Belmore refiled its complaint in November 2017.

The complaint alleged, in pertinent part:

> On June 22, 2015, [Belmore] purchased the real property located [in] . . . Baltimore, Maryland [] with the intent to renovate and sell the property. In furtherance of that plan, [Belmore] engaged the home improvement services of [Standard Construction]. The relationship was memorialized by way of a Contractor Agreement, dated September, 2015 ("Baltimore Street Agreement").
>
> [Standard Construction] performed the renovation work on Baltimore Street and thereafter concluded the work in June of 2016. [Belmore] sold Baltimore Street to the subsequent purchaser by way of deed dated July 8, 2016.
>
> Shortly after the sale of Baltimore Street, the parties met to discuss the final accounting on the project. Upon review of [Standard Construction]'s performance under the Baltimore Street Agreement, it became evidence [sic] that [Standard Construction] received monetary amounts to which [it] was not entitled in the approximate amount of $5,600.00. [Belmore] thereafter made demand for the unearned monies.

The complaint also contained allegations related to another property owned by Belmore in Baltimore City for which it engaged Standard Construction to perform home improvement services under another agreement—the "Keswick Road Agreement." According to Belmore, Standard Construction had agreed to complete its work under the Keswick Road Agreement by November 2015. When Standard Construction allegedly failed to do so, Belmore agreed to extend the deadline until July 1, 2016 in exchange for the addition of liquidated damages provisions to the agreement that would apply if Standard Construction failed to meet the new deadline. The complaint alleged "[b]ased upon the agreed[-]upon time standard fees, [Standard Construction] is responsible for fees in the amount of $22,965.00. [Standard Construction] refuses all demands to satisfy this outstanding obligation."

Belmore included three counts in the complaint: Count I for breach of contract under the Baltimore Street Agreement; Count II for breach of contract under the Keswick Road Agreement; and a third count alleging a "Rule 1-341 Bad Faith Defense." Under the third count, Belmore complained that:

> Shortly before the scheduled trial date, counsel for [Standard Construction] initiated contact with undersigned counsel and suggested that the Complaint be dismissed and that the parties engage in binding arbitration.
>
> The parties thereafter agreed to arbitrate the dispute and [Belmore] dismissed the pending lawsuit.
>
> [Belmore] relied upon the representations of [Standard Construction] in that they agreed to engage in arbitration.
>
> Despite repeated efforts on the part of [Belmore], [Standard Construction] refused to schedule arbitration.

Motion to Dismiss and Compel Arbitration

In January 2019, Standard Construction filed a motion to dismiss, arguing, among other things, that the breach of contract claims must be resolved through binding arbitration. The district court issued an order on March 5, 2019 staying this motion and petition and further ordered the parties to submit the matter to arbitration by May 6, 2019. The order provided that if the parties failed to begin arbitration by that date, then "the arbitration clause shall be deemed waived, and the matter shall be re-set for a pre-trial conference[.]" After receiving this order, the parties engaged in extensive email correspondence about how to proceed with the arbitration. They were unable to reach an agreement by the date set by the district court.

On April 22, 2019, Standard Construction filed a "Motion for Sanctions Including Dismissal with Prejudice and Request for Attorneys' Fees." The district court denied the motion to dismiss on June 10, 2019. Then, on July 1, 2019, Standard Construction filed a notice of appeal of the district court's denial of its motion to dismiss. The district court did not process the notice of appeal, stating that because the appeal was on the denial of a motion to dismiss, it was "not permitted."

Proceedings in the Circuit Court

On February 19, 2020, Standard Construction filed a petition and complaint in the Circuit Court for Baltimore City. Under "Count I," Standard Construction stated that it was "petition[ing the circuit court] to compel Arbitration and/or declare that [Belmore] has forfeited its rights." Under "Count II," Standard Construction asked for a declaratory

judgment stating that Belmore had forfeited the claims it was pursuing in the district court. In support of these claims, Standard Construction asserted that although both parties had agreed to arbitrate, Belmore was using the district court litigation in a wrongful attempt to thwart the arbitration agreement and to impose unnecessary court costs.

On March 9, 2020, Belmore filed a motion to dismiss with the circuit court. In its motion, Belmore asserted that Standard Construction's filing in the circuit court was an attempt to frustrate and delay the adjudication process for a matter that had begun nearly three years prior in district court. Belmore averred that the petition was Standard Construction's sixth attempt to either compel arbitration or dismiss Belmore's lawsuit, under the same premise that there was failure to arbitrate between the parties.[3] Belmore further contended that, out of the first five attempts made in the district court, four of those attempts resulted in a direct denial from the district court, and only one attempt resulted in a brief stay of the proceedings for the parties to arbitrate. Belmore also asserted that despite Standard Construction's attempts to compel arbitration, Standard Construction had repeatedly refused to cooperate in the companies' discussions regarding how to move forward with the arbitration.

Belmore further argued that the circuit court was precluded from hearing the matter under the doctrine of collateral estoppel and that the circuit court did not have appellate

[3] These attempts included (1) the agreement in August 2017 under which Belmore agreed to voluntarily dismiss its complaint in favor of arbitration; (2) the January 2019 motion to dismiss; (3) the April 2019 motion for sanctions including dismissal with prejudice; and (4) the July 2019 notice of appeal of the denial of the April 2019 motion. Standard Construction also apparently filed another motion to dismiss which was denied by the district court on March 30, 2018, but the motion is not in the record.

jurisdiction to review the district court's decision. Several exhibits were attached to the motion, including email correspondence between the parties, a copy of an unsigned arbitration agreement, and a copy of pleadings filed in the district court.

Standard Construction filed an Opposition to the Motion to Dismiss on March 30, 2020 along with an amended petition and complaint. The amended petition and complaint was almost identical to the original filing, differing only by correcting errors misidentifying parties, and by briefly expanding on Standard Construction's assertions regarding the need for the circuit court litigation. Specifically, the amended petition and complaint asserted that

> prior attempts to compel [Belmore] to honour its promise in the [d]istrict [c]ourt have failed, and [Standard Construction] harbours concern that [Belmore] will claim that only the [c]ircuit [c]ourt possesses this power to thwart appeals and/or further pursuit, which may not be correct, but without waiver or prejudice, Belmore cannot later dispute that [the circuit] [c]ourt possesses such power.

Circuit Court Hearing

The circuit court held a hearing on the motion to dismiss on May 29, 2020. At the hearing, counsel for Belmore argued that the petition and complaint was procedurally deficient because it was filed as an independent action, and because the district court's denial of a motion to compel arbitration is not suitable for an interlocutory appeal. To the contrary, counsel for Standard Construction argued that the case was properly before the circuit court because it was actually an appeal from a district court order denying a motion

to enforce a settlement.[4] Interestingly, counsel for Standard Construction argued that compelling arbitration was still the proper remedy.

At the conclusion of arguments from counsel, the court granted the motion to dismiss. The court explained that the law does not allow this type of interlocutory challenge, and that Standard Construction was required to wait for a final judgment in the district court case before it could make the arguments presented in the circuit court. The court also explained that it was basing its decision solely on the fact of the proceedings in district court,[5] and that all other arguments made by counsel were "not relevant" to the court's decision. The court also stated that it was irrelevant whether the case was an appeal, a petition for declaratory judgment, or a motion to compel arbitration, because regardless of how it was presented, it was an improper and premature attempt to have the issues in the district court adjudicated again.

Standard Construction noted a timely appeal.

[4] No written settlement agreement appears in the record provided to this Court. Furthermore, in its brief to this Court, Standard Construction contradicts its earlier representations to the circuit court by stating that the circuit court action "was not an appeal of a [d]istrict [c]ourt ruling."

[5] The circuit court took judicial notice of the district court proceedings, which Standard Construction argues was improper because the circuit court failed to specify exactly what "proceedings" it was taking judicial notice of. We conclude that even if the circuit court erred on this point, the error is harmless. The only facts that were necessary for the circuit court to take judicial notice of were that (1) there existed an ongoing district court case between the same parties, and (2) the pleadings in that case addressed the same issues raised in the circuit court case. These are undisputed matters of public record, entirely appropriate for judicial notice. *Abrishamian v. Wash. Med. Grp., P.C.*, 216 Md. App. 386, 414 (2014) (stating that "public records" are a "categor[y] of adjudicative facts susceptible to judicial notice").

DISCUSSION

Before this Court, Standard Construction advances several arguments in support of its contention that the circuit court proceeding was proper. First, Standard Construction compares the district court's arbitration order to the denial of a motion to enforce a settlement agreement, which the Court of Appeals held in *Clark v. Elza* to be a collateral order which is immediately appealable before a final judgment. 286 Md. 208, 213 (1979). Standard Construction argues that the parties to this case should have a chance to resolve the arbitration dispute now because, as with the settlement agreement in *Clark*, waiting until after a final judgment would deny them the chance to avoid the expense of trial. Second, while acknowledging the general rule that parties may not seek declaratory judgments to resolve issues already being litigated between the same parties in other actions, Standard Construction contends that the prospect of an unnecessary trial provides the "very unusual and compelling circumstances" required to overcome the general rule. *Haynie v. Gold Bond Bldg. Prods.*, 306 Md. 644, 652 (1986) (quoting *A. S. Abell Co. v. Sweeney*, 274 Md. 715, 721 (1975)).

Belmore counters that *Clark* is inapplicable to this case because this action is not an attempt to enforce a settlement agreement. Belmore points out that Standard Construction's pleadings in the circuit court do not contain a request to enforce a settlement agreement. Also, Belmore urges, this case presents no unusual or compelling circumstances justifying Standard Construction's pursuit of a declaratory judgment in the circuit court. Standard Construction, says Belmore, simply "did not like the rulings of the [d]istrict [c]ourt and attempted to make an end-run around those rulings to the [c]ircuit

[c]ourt." Finally, Belmore contends that Standard Construction's complaint and petition in the circuit court is barred under the doctrine of collateral estoppel. It argues that because "the issues presented are identical to those previously adjudicated in the [district court]. . . . [Standard Construction] is precluded from now asking this Court to review the same issues and render a different decision."

We review the grant of a motion to dismiss *de novo*, addressing "whether the trial court was legally correct." *D.L. v. Sheppard Pratt Health Sys., Inc*., 465 Md. 339, 350 (2019) (quoting *Davis v. Frostburg Fac. Operations, LLC*, 457 Md. 275, 284 (2018)). The circuit court's judgment may be affirmed "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.* (quoting *Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74 (2015)).

Petition to Compel Arbitration

Parties are normally permitted to challenge trial court decisions only in appeals from final judgments.[6] *Clark*, 286 Md. at 212. A final judgment is a judgment or order that "settle[s] an entire claim" in a way that "determine[s] and conclude[s] the rights involved, or den[ies] the appellant the means of further prosecuting or defending his rights and interests in the subject matter of the proceedings." *Scheule v. Case Handyman & Remodeling Servs., LLC*, 412 Md. 555, 571 (2010) (quoting *U.S. Fire Ins. Co. v. Schwartz*, 280 Md. 518, 521 (1977)). In particular, "an order denying a motion to compel arbitration

[6] The purpose of this final judgment rule is, at least in part, "to avoid the delay that inherently accompanies time-consuming interlocutory appeals." *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 434 (1985).

is not [a] final [judgment]" because it "does not put the parties out of court but, instead, effectively keeps [them] in court to litigate the claims remaining between them." *Id.* at 572.

Here, the district court's arbitration order was not a final judgment. Standard Construction's petition challenged the portion of the district court's arbitration order that provided for waiver of arbitration rights if not exercised by a certain date. Once the deadline passed, the district court's order had the same effect as an order denying a motion to compel arbitration: it kept them in court rather than in arbitration. The district court's order, therefore, was not a final judgment. *See id.*

As an exception to the final judgment rule, parties can appeal collateral orders under the collateral order doctrine. *Clark*, 286 Md. at 213. Collateral orders are those that "(1) conclusively determine the disputed question; (2) resolve an important issue; (3) resolve an issue that is completely separate from the merits of the action; and (4) *would be effectively unreviewable on appeal from a final judgment*." *Harris v. State*, 420 Md. 300, 316 (2011) (quoting *Falik v. Hornage*, 413 Md. 163, 176-77 (2010)) (emphasis added). The collateral order doctrine is applied only "under extraordinary circumstances." *Wash. Suburban Sanitary Comm'n v. Bowen*, 410 Md. 287, 296 (2009). Here, the collateral order doctrine does not apply because the district court's arbitration order could be reviewed on appeal from a final judgment. *See Scheule*, 412 Md. at 577 (holding that the collateral order doctrine does not apply to an order denying a motion to compel arbitration because the issue can be properly addressed on appeal from a final judgment).

An interlocutory challenge to ongoing proceedings can also, at times, be made through a petition for a writ of mandamus. A writ of mandamus is an order from a court to either a lower court or an executive body which compels the target to do something that the petitioner has a clear legal right to demand of them. *City of Seat Pleasant v. Jones*, 364 Md. 663, 673-74 (2001) (quoting *Goodwich v. Nolan*, 343 Md. 130, 144 (1996)). To grant a mandamus petition against a lower court, a court must be able to justify the departure from the final judgment rule. *See Phillip Morris Inc. v. Angeletti*, 358 Md. 689, 712-14 (2000) (discussing this principle at length). To this end, "a writ of mandamus will not be granted where the petitioner has a specific and adequate legal remedy to meet the justice of the particular case[.]" *Id.* at 712 (quoting *Brack v. Wells*, 184 Md. 86, 90-91 (1944)).

In this case, Standard Construction's petition could be interpreted as something akin to a petition for a writ of mandamus. Like a petition for a writ of mandamus, the petition in this case sought to compel action in the district court, and it was filed as an original action in another court with appellate jurisdiction over the district court. *See* Md. Rule 7-101 *et seq.* (allowing appeals from the district court to the circuit court). But even if we adopt this interpretation of Standard Construction's petition, it was properly dismissed by the circuit court. Standard Construction had available to it the specific and adequate legal remedy of an appeal from a final judgment in the district court, rendering mandamus

improper.[7] *In re Petition for Writ of Prohibition*, 312 Md. 280, 306 (1988) ("[Mandamus] is not a substitute for appeal or writ of error.").

Complaint for Declaratory Judgment

In *Hanover Investments, Inc. v. Volkman*, the Court of Appeals held that "a court should not entertain an action for declaratory relief. . . . when there is already a pending action 'involving the same parties and in which the identical issues that are involved in the declaratory action may be adjudicated.'" 455 Md. 1, 17 (2017) (quoting *Sprenger v. Pub. Serv. Comm'n of Md.*, 400 Md. 1, 26 (2007)). In such a situation, the existence of the pending action on the same issues is "fatal" to the declaratory judgment action. *Sprenger*, 400 Md. at 27-28. This rule can only be overcome in exceptional cases, when there are "very unusual and compelling circumstances." *Haynie v. Gold Bond Bldg. Prods*, 306 Md. 644, 652 (1986) (quoting *A.S. Abell Co. v. Sweeney*, 274 Md. 715, 721 (1975)).

We are aware of only one Maryland case, *Harpy v. Nationwide Mutual Fire Insurance Company*, that recognized facts as sufficiently "unusual and compelling" to satisfy this exception. 76 Md. App. 474, 482 (1988). In *Harpy*, a daughter brought a tort suit against her father for years of sexual abuse. *Id.* at 475. The father demanded that his insurance company defend him in the tort suit, but the insurance company then brought a

[7] In rare cases, mandamus may be appropriate even when the same issues could be raised in an appeal from a final judgment. *See, e.g.*, *In re Mohammad*, 866 F.3d 473, 475 (D.C. Cir. 2017) (per curiam) ("Mandamus is an appropriate vehicle for seeking recusal of a judicial officer during the pendency of a case, as ordinary appellate review following a final judgment is insufficient to cure the existence of actual or apparent bias[.]" (cleaned up)). But in the present case, there is nothing that would make appeal an inadequate remedy.

separate declaratory judgment action seeking a holding that it was not required to defend the father. *Id.* at 475-76. We held that the issues in the declaratory judgment action were distinct from those in the tort action, but as an alternative holding, we also stated that these were "'unusual and compelling circumstances' justifying declaratory relief." *Id.* at 482.

Here, the declaratory judgment action in the circuit court was maintained between the same parties as the action in the district court and it involved identical issues. The amended petition in the circuit court requested a judgment declaring "that [Belmore] has forfeited its claims against [Standard Construction]" because Belmore's pursuit of the district court litigation was allegedly a wrongful attempt to prevent the dispute from going to arbitration. In other words, Standard Construction asked the circuit court to determine whether Belmore had forfeited its claims in the district court through its conduct in the district court. Therefore, because the declaratory judgment claim sought nothing further than to relitigate issues already pending in the district court, the existence of the district court litigation is fatal to Standard Construction's request for declaratory relief.[8]

Moreover, we are not persuaded that this is an exceptional case warranting a declaratory judgment action. Standard Construction argues that this case is exceptional

[8] Belmore expressed a similar argument through its contention that the circuit court case was precluded by collateral estoppel. But while collateral estoppel is conceptually related to the rule against declaratory judgment actions on issues already being litigated in another case, it does not apply to this case. The doctrine of collateral estoppel states that "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination [of that issue] is conclusive in a subsequent action between the [same] parties." *Att'y Grievance Comm'n of Md. v. Sperling*, 472 Md. 561, 587 (2021). Here, the district court case never reached a final judgment, and thus collateral estoppel does not apply.

because requiring it to go through a possibly unnecessary trial would cause it undue expense and hardship. The Court of Appeals, however, has made it clear that there is nothing exceptional about a party to a civil suit having to wait until after trial before appealing an interlocutory order—even when correcting an error in the order might have prevented the trial in the first place. *Scheule*, 412 Md. at 557. Accordingly, we find no legal error in the circuit court's dismissal of Standard Construction's request for declaratory judgment.

Conclusion

We hold that the circuit court's decision to grant Belmore's motion to dismiss was correct as a matter of law.

JUDGMENT OF THE CIRCUIT COURT AFFIRMED; COSTS TO BE PAID BY APPELLANT.