

Circuit Court for Montgomery County  
Case No. 422746-V

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 652

September Term, 2017

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RODNEY RYAN GRAVES

v.

NATHANIEL SPINNER, *et. al*

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Woodward, C.J.,  
Eyler, Deborah S.,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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PER CURIAM

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Filed: July 5, 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. Md. Rule 1-104.

In 2016, Rodney Ryan Graves, appellant, filed a “Petition for Declaratory Judgment,” in the Circuit Court for Montgomery County, and prayed a jury trial. In that petition Graves alleged that he had entered into an oral contract with Nathaniel Spinner and Spinner Development, LLC, appellees, whereby appellees had agreed to purchase several properties, and Graves had agreed to provide the money needed to improve them. Once rehabilitated, appellees would then sell the properties and split the profits evenly with Graves, minus the original purchase price and rehabilitation expenses. Graves purportedly assisted appellees with three projects in Washington, D.C. and one in Prince George’s County, Maryland.<sup>1</sup> Graves further claimed that appellees had refused to pay him pursuant to the terms of the agreement. As relief, Graves sought: (1) a declaration that he and appellees had a contract; (2) a declaration that appellees had breached that contract; (3) a declaration that appellees were obligated to pay him \$75,000 for breaching the contract; and (4) a court order directing appellees to pay him \$75,000. In their answer, appellees claimed that Graves had only agreed to provide them with construction services for the properties, that Graves had not preformed those services in a satisfactory manner, and that Graves could not recover damages in any event because he was not a licensed contractor.

At the beginning of trial, the court observed that a jury trial for a declaratory judgment was “a first in my book[.]” Counsel for appellees concurred and indicated his belief that Graves was, in fact, attempting to bring a breach of contract action. Graves

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<sup>1</sup> In his complaint, Graves stated that the Washington, D.C. projects were located at: 4648 Livingston Road SE; 5500 New Hampshire Avenue NW; and 701 K Street NE. The Prince George’s County property was 4319 Vine Street, Capitol Heights, Maryland.

initially disagreed with appellees’ counsel, stating that he wanted a jury to determine what type of contract existed, and then, once the jury determined that, have a judge declare the rights of the parties to the contract. However, upon questioning by the court, Graves stated that his “bottom line” was “trying to recoup the money that [he] spent.” Because Graves acknowledged that he was seeking monetary relief, the court observed that the case appeared to be “an absolute classic breach of contract case, not declaratory judgment” and that they could “just treat [the case] like a breach of contract, and the jury will decide, if it gets that far, what, if any, money judgment should be entered.” Graves did not object and the trial proceeded as a breach of contract action.

At the conclusion of trial, the jury determined that a contract existed between Graves and Spinner Development, LLC, but that Spinner Development, LLC did not owe any money to Graves under the contract. The jury also determined that no contract existed between Graves and Nathaniel Spinner. Graves then filed a timely motion for a new trial, claiming that the court had erred in allowing the trial to proceed as a breach of contract action instead of a declaratory judgment action. The court denied that motion and this appeal followed.

On appeal, Graves raises three questions, which reduce to one: whether the court erred in converting his declaratory judgment action into a suit for breach of contract

because, he claims, he was not prepared to argue the latter at trial.<sup>2</sup> For the reasons that follow, we affirm.

We have made clear in our prior opinions that “[w]hen a party has the option of objecting, his failure to do so is regarded as a waiver, estopping him from obtaining review of that point on appeal.” *Geneva Enters., Inc. v. Harris*, 122 Md. App. 67, 76 (1998) (quoting *Fireman’s Fund Ins. Co. v. Bragg*, 76 Md. App. 709, 719 (1988)); *see also Halloran v. Montgomery Cnty. Dept. of Pub. Works*, 185 Md. App. 171, 201 (2009) (“When a party has the option either to object or not to object, his failure to exercise the option while it is still within the power of the trial court to correct the error is regarded as a waiver of it estopping him from obtaining a review of the point or question on appeal.”(internal quotation marks and citation omitted)).

Here, Graves initially informed the court that he was seeking declaratory relief. However, when the court questioned Graves further, Graves indicated that he ultimately wanted to recover monetary damages, which the jury could have only awarded if the court construed Graves’s claim as a breach of contract action.<sup>3</sup> The court then informed the

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<sup>2</sup> We note that, in his questions presented, Graves asserts that he is entitled to a jury trial in a declaratory judgment action. This is a correct statement of the law, as far as it goes. However, Graves received a jury trial in this case, albeit for a breach of contract claim. Therefore, the ultimate issue we must decide is whether the court erred in construing Graves’s declaratory judgment action as a breach of contract action before submitting it to the jury. Because we hold that this issue is not preserved, the hypothetical question of whether Graves would have had a right to a jury trial if his case had proceeded as a declaratory judgment action is not properly before us.

<sup>3</sup> *See generally Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 15 (2017) (noting that, in a declaratory judgment action, “a party may seek a definitive statement of the ‘correct  
(continued)

parties that they could “just treat [the case] like a breach of contract” and let the jury decide the issue of damages. Graves did not object. Moreover, he did not object to: (1) the court’s statement to the jury during *voir dire* that the case arose from “a contract dispute” and that Graves was “asking for a money judgment” to compensate him; (2) the court’s instructions to the jury regarding contract principles; or (3) the verdict sheet, which asked the jury to determine whether a contract existed between the parties and whether appellees owed Graves any money under that contract. In fact, not only did Graves fail to object at any point, but also he specifically informed the jury that he was seeking monetary relief in his opening statement and closing argument. And, although Graves did raise the issue in his motion for a new trial, raising trial errors for the first time in a motion for a new trial is not a substitute for preservation. *Torres v. State*, 95 Md. App. 126, 134 (1993) (“A post-trial motion cannot be permitted to serve as a device by which a defendant may avoid the sanction for non-preservation.”). Consequently, we hold that Graves has not preserved his claim for appellate review.

Finally, Graves contends that the court erred in denying his motion for a new trial. However, in light of Graves’s failure to object to the court’s treatment of his complaint as

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answer’ to a disputed question *without asking that the court also enforce its decision by, for example, awarding monetary damages to the prevailing party* or by ordering another party to act (or refrain from acting) in a certain way” (emphasis added)); *Falls Road Community Ass’n, Inc. v. Baltimore County*, 437 Md. 115, 148 (2014) (noting that the Declaratory Judgment Act contemplates the filing of a separate action “*after the declaratory judgment* in which the prevailing party identifies the ancillary relief believed necessary to implement a declaratory judgment” (emphasis added); *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 202 Md. App. 307, 329 (2011), *judgment aff’d*, 429 Md. 387 (2012) (noting that “declaratory relief is viewed as a judicial declaration of the relationship between the parties, not the enforcement of any claim”).

a breach of contract action until after the jury had returned a non-favorable verdict, we find no abuse of discretion in the court’s decision to deny Graves’s motion for a new trial based on this issue. *See Buck v. Cam’s Broadroom Rugs, Inc.*, 328 Md. 51, 61-62 (1992) (noting that the failure to object to an alleged error is a significant factor to be considered by the court in determining whether to grant a motion for a new trial).

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