UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1662

September Term, 2014

KEVIN PRICE

v.

STATE FARM INSURANCE COMPANY, *et al.*

Nazarian,
Leahy,
Wilner, Alan M.
(Retired, Specially Assigned),

JJ.

Opinion by Wilner, J.

Filed: September 14, 2015

*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.

On the evening of January 25, 2012, Ronald Krach, while operating his 2004 Dodge Dakota along Belair Road in Baltimore City, struck and killed Joice Price, who was crossing the street in a motorized wheelchair. As a result of that event, a civil action was filed against Krach by Kevin Price, individually and as personal representative of Joice's Estate.

When an issue arose as to whether Krach was insured with respect to that collision, Price filed an action in the Circuit Court for Baltimore City against Krach, State Farm Insurance Company, and the Maryland Automobile Insurance Fund (MAIF), seeking a declaratory judgment that Krach had in effect at the time of the accident a liability insurance policy issued by State Farm --Policy No. 305 7282-F27-2-8 -- in the amount of $250,000 per person and $500,000 per occurrence. That was the only relief sought.

State Farm answered the complaint and filed a motion for summary judgment on the principal ground that the policy in question had been cancelled as of 12:01 a.m. on January 24, 2012 due to Krach's failure to pay the premium on the policy and that the policy had not been reinstated prior to the accident. Although Price, Krach, and MAIF contended that the premium should be regarded as having been timely paid, the court determined, orally, that the premium had not been paid in time to avoid cancellation and that, at the time of the accident, the policy had been cancelled and had not been reinstated.

Upon those determinations, it entered an order granting State Farm's motion. This appeal by Price, with support from MAIF, as an appellee, ensued.[1]

Unfortunately, although the court did address and resolve, in the context of the motion for summary judgment, the legal issue presented, it never entered a declaratory judgment declaring the rights of the parties, which is the one and only thing it was asked to do. The Court of Appeals, on numerous and recent occasions, has made unmistakably clear that, although it is permissible for a Circuit Court to resolve matters of law by summary judgment in declaratory judgment actions, "the court *must*, in a separate document and in writing, define the rights and obligations of the parties or the status of the thing in controversy" even if "the action is not decided in favor of the party who sought the declaratory judgment." (Emphasis added). *Allstate v. State Farm*, 363 Md. 106, 117, n.1, 767 A.2d 831, 837, n.1 (2001); *Lovell Land v. SHA*, 408 Md. 242, 256, 969 A.2d 284, 292 (2009), *Catalyst Health v. Magill*, 414 Md. 457, 472, 995 A.2d 960, 968 (2010), *Montgomery County v. Shropshire*, 420 Md. 362, 371, n.7, 23 A.3d 205, 210 (2011), *DeWolfe v. Richmond*, 434 Md. 403, 433, 76 A.3d 962, 979 (2012).[2] An order stating only that one party's motion for summary judgment is granted "fails to comply with the

[1] State Farm has filed a motion to strike MAIF's brief on the ground that, as MAIF did not file a cross-appeal, it is impermissible for it to request that the judgment below be reversed. In light of our decision effectively to affirm the ruling of the Circuit Court, the motion is moot.

[2] As *Allstate v. State Farm* makes clear, the requirement of a separate written declaration "is not just a matter of complying with a hyper-technical rule." Rather, it is "for the purpose of giving the parties and the public fair notice of what the court has determined." *Id* . at 117, n.1 767 A.2d at 837, n.1.

Declaratory Judgments Act requirement that the court declare the parties' rights in light of the issues presented." *Jennings v. Government Employees Ins.*, 302 Md. 352, 356, 488 A.2d 166, 168 (1985).

As some of those cases also make clear, however, the lack of a separate written declaratory judgment is not a jurisdictional defect. The appellate courts have discretion to review the merits of the controversy and remand for entry of an appropriate declaratory judgment by the circuit court. The record before us in this case permits us to do that, and that is what we shall do. The beneficent exercise of our discretion in this case should not, however, be regarded as a right to have this kind of dereliction excused.

FACTS BEARING ON SUMMARY JUDGMENT

As noted, primary coverage on the Dodge Dakota owned by Krach was provided by State Farm Policy No. 305 7282-F27-20S. Krach's wife, Angela Sheldon, owned two other vehicles that also were covered by State Farm policies – a 2011 GMC Terrain covered by Policy No. 130 0588-D18-20B and a 2001 Pontiac Montana covered by Policy No. 602 2358-F-10-20E. The premiums on Sheldon's policies were up-to-date; nothing was owed on them, and those policies were in full force and effect. Krach was delinquent, however, in paying the premium due for the renewal of his primary policy which, according to the Declarations page, was due to expire at 12:01 a.m. on December 27, 2011.[3]

[3] It appears from an affidavit of Wendy Riggs-Richie, a State Farm custodian of records, submitted as Exhibit 11 to the Motion for Summary Judgment, that Morgan Krach also was an insured under Ronald Krach's policy and that, on November 10, 2011, Ronald Krach was notified that the policy would not be renewed unless Morgan Krach was excluded as an insured. Krach agreed to that condition, whereupon, on (continued…)

On January 11, 2012, State Farm sent a cancellation notice to Krach, informing him that the renewal premium of $439.20 was past due and if that amount was not paid, the policy would be cancelled effective 12:01 a.m. standard time on January 24, 2012. The notice stated that payment of the premium prior to "the date *and time* of cancellation" would reinstate the policy, but if the premium was paid "after that date *and time*, you will be informed whether your policy has been reinstated and, if so, the exact date and time of reinstatement." (Emphasis added). The notice added that "[t]here is no coverage between the date *and time* of cancellation and the date *and time* of reinstatement." (Emphasis added).

At some point on January 24, 2012, Sheldon electronically directed her bank, Wells Fargo, to pay $590.52 to State Farm. In an affidavit submitted in opposition to the Motion for Summary Judgment, Sheldon averred that she directed that payment on behalf of her husband, that she intended that it be applied to the policy covering his Dodge Dakota, that she assumed it would be credited to that policy, and that she also assumed that, being sent electronically, it would be received by State Farm that day. Krach submitted an affidavit containing similar averments. Neither affidavit specifies what time on the 24th the direction was sent to Wells Fargo, specifically whether it was at or before 12:01 a.m. Neither Price, nor anyone else, has contended that Sheldon directed that payment at or prior to 12:01 a.m.

December 5, 2011, State Farm sent Krach a renewal bill for $439.20 and advised that payment of that amount was due no later than January 5, 2012.

The only reasonable inference is that her communication with Wells Fargo was after 12:01 a.m.

Two exhibits to the motion for summary judgment – Exhibits 5 and 6 -- when read together, are inconsistent with Krach's and Sheldon's *assumption* as to when the payment would be received by State Farm and also raise a question regarding their *assumption* that State Farm would apply the payment to Krach's primary policy. An online payment confirmation from Wells Fargo (Exhibit 5) confirms that Sheldon directed the payment to State Farm on January 24 and states that her direction would be "processed" on the 24th, but it also states clearly that the payment would be "Deliver[ed] by" January *26*, 2012. From the face of the document, Sheldon was immediately on notice that State Farm may not receive the payment until January 26, and that is what the evidence shows occurred. A State Farm Bill and Payment Summary (Exhibit 6) shows that the payment was made by "CHECKFREE," an undefined term, and states that the sum was not, in fact, received by State Farm until January 26.

With respect to how the payment would be applied by State Farm, there was no direction to Wells Fargo, or any other communication prior to January 26, 2012, that State Farm apply the payment to Krach's primary policy, and, indeed, when the payment was received by State Farm on the 26th, it applied the payment to Sheldon's policy that insured her GMC Terrain. Sheldon later contended that her failure to specify that the payment should be applied to Krach's policy was due to the "confusing and ambiguous layout and

lack of description on the bill-pay site," presumably meaning the Wells Fargo electronic payment site.

The accident, as noted, occurred on the evening of January 25. Krach reported the accident to State Farm the next day. It was not until then that Krach and Sheldon discovered that Sheldon's payment had not been received on the 24th and that, when received on the 26th, it had been applied to the "wrong" policy. On the 26th, Krach paid the correct amount due -- $ 439.20 – by credit card, whereupon State Farm sent Sheldon a refund of the $590.42 she had paid, reinstated Krach's policy as of 12:01 a.m. on January 27, 2012, and sent Krach a refund of $7.48 for the three days his policy was out of force (January 24, 25, and 26). It also informed Krach that it reserved the right to deny coverage for the January 25 accident. That, of course, is what led to this declaratory judgment action.

DISCUSSION

The standard of appellate review of a declaratory judgment entered as the result of granting a motion for summary judgment is whether the declaration is correct as a matter of law. We review the record in a light most favorable to Price, the non-moving party, and construe any reasonable inferences that may be drawn from the facts against State Farm, the moving party. If there are no genuine disputes of *material* fact, we review, *de novo*, the trial court's conclusions of law. *Land Preservation v. Claggett*, 412 Md. 45, 61, 985 A.2d 565, 574-75 (2009); *DeWolfe v. Richmond*, 434 Md. 403, 412, n.6, 76 A.3d 962, 967, n.6 (2012). Ordinarily, the appellate court is confined to the legal grounds relied on by the

trial court in granting the summary judgment. *Pasteur v. Skevofilax*, 396 Md. 405, 440-41, 914 A.2d 113, 134 (2007).

At the hearing in the Circuit Court, the argument in opposition to the motion for summary judgment centered on a proposed extension of the "postal acceptance rule," which is to the effect that, when a party consents to a required communication, including a payment, being sent by mail, the communication is regarded as received by that party when it is properly delivered to the U.S. Postal Service. *See Reserve Insurance v. Duckett*, 249 Md. 108, 116-122, 238 A.2d 536. 540-43 (1968); *U.S. Life v. Wilson*, 198 Md. App. 452, 466-81, 18 A.3d 110, 117-127 (2011) (applying Illinois law). Price argued that the same principle should apply to electronic transmissions, the effect of which would be that State Farm should be regarded as having received Sheldon's payment on January 24 – the day she directed Wells Fargo to make the payment – and that, because nothing was due on her policies, State Farm should have credited that payment to her husband's policy, even though there was no direction for it to do so, she was not the owner of the insured vehicle, and the amount was in excess of the premium that was due – overdue – on that policy.

In support of its motion, State Farm contested those arguments, but its main point was that they were irrelevant. It urged that, by the clear terms of the cancellation notice, Krach's primary policy was cancelled as of 12:01 a.m. on January 24, and it was undisputed that, even if Sheldon's payment were to be regarded as received by State Farm the moment she pushed the button authorizing Wells Fargo to send it, that was undisputedly after 12:01 a.m. By then, the policy had been cancelled; it was no longer in effect and was not subject

to automatic reinstatement. That was the basis – the only basis – on which the court granted the motion for summary judgment, and it was legally correct in doing so. Whether, and under what circumstances, the postal acceptance rule should be extended to apply to electronic transmissions is an interesting and important question, but it is not relevant to this case. From his remarks, it is clear that the trial judge's heart was with Mr. Price, but his mind was where it needed to be.

CASE REMANDED TO CIRCUIT COURT FOR BALTIMORE CITY TO ENTER A PROPER DECLARATORY JUDGMENT IN CONFORMANCE WITH THE SUMMARY JUDGMENT ENTERED ON SEPTEMBER 15, 2014; APPELLANT TO PAY THE COSTS.