UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1499

September Term, 2015

MARIA GORDON, ET AL.

v.

MOTOR VEHICLE
ADMINISTRATION

Wright,
Friedman,
Shaw Geter,

JJ.

Opinion by Wright, J.

Filed: November 2, 2016

On March 31, 2015, Maria Beamon Gordon, Aminda Kadir, and Migdalia Von Strauss, appellants, filed a complaint in the Circuit Court for Montgomery County, alleging negligence (Count I), a violation of Article 14 of the Maryland Declaration of Rights (Count II), and fraud (Count III) against appellee, the Motor Vehicle Administration ("MVA"). This complaint arose from appellants' violation of Maryland's drunk driving laws, which consequently triggered the State's automatic drivers' license suspension procedures.[1] Appellants "appealed" the automatic suspension procedures to the Office of Administrative Hearings ("OAH"). In so doing, each was required to submit a $150.00 filing fee to the OAH. Appellants' counts all question the validity of this $150.00 filing fee.

On May 15, 2015, appellee filed a motion to dismiss pursuant to Md. Rule 2-322(a)(4) for insufficiency of service of process. Following proper service of process on the Maryland State Treasurer on May 20, 2015, appellee withdrew its first motion to dismiss on May 28, 2015. On June 18, 2015, appellee filed a second motion to dismiss pursuant to Md. Rule 2-322(b)(2). After a hearing on August 25, 2015, the circuit court granted appellee's second motion and dismissed the counts with prejudice and without leave to amend. On August 26, 2015, appellants noted this appeal.

Questions Presented

We have reworded and reorganized appellants' questions for clarity:[2]

[1] It is undisputed that appellants violated Maryland's drunk driving laws, and the laws themselves are not at issue in this case.

[2] In their brief, appellants asked: (continued…)

1. Did the circuit court err in dismissing with prejudice appellants' first cause of action for negligence?

2. Did the circuit court err in dismissing with prejudice appellants' second cause of action for violating Article 14 of the Maryland Declaration of Rights?

3. Did the circuit court err in dismissing with prejudice appellants' third cause of action for fraud?

4. Did the circuit court abuse its discretion in prohibiting appellants from amending their complaint?

For the reasons discussed below, we affirm the circuit court's judgment.

Facts

It is undisputed that, prior to the payment of the fees in question, each of the appellants was arrested and charged with violating Maryland's drunken driving laws. As

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1. Whether a Licensee must pay a filing fee as a condition precedent to obtaining a hearing on the merits of the proposed suspension?

2. Whether, assuming the Licensee must pay anything at all, the filing fee was only $15?

3. Whether the MVA has a duty to truthfully inform Licensee's such as Appellants the putative class that (at most) the filing fee for the administrative hearing was only $15?

4. Whether, where the Legislature did not authorize a $150 filing fee, the filing fee violates Article 14 of the Maryland Declaration of Rights?

5. Whether, where the MVA had actual notice as early as 2011 that the filing fee was, at most, $15 and simply argued that the Licensee was precluded from raising the issue at a "show cause" hearing, the MVA acted fraudulently?

6. Whether the trial court should have granted leave to amend?

the Court of Appeals reiterated in *Motor Vehicle Admin. v. Weller*, 390 Md. 115, 131-33 (2005):

> [Md. Code (1977, 2012 Repl. Vol.), Transportation Article ("TA")] Section 16-205.1, commonly known as Maryland's Implied Consent Law, provides the statutory structure for the suspension of a suspected drunk motorist's driving privileges where that driver refuses to submit to a chemical breath test for intoxication. Section 16-295.1(a)(2) states:
>
> > (2) Any person who drives or attempts to drive a motor vehicle on a highway or on any private property that is used by the public in general in this State is deemed to have consented, subject to the provisions of §§ 10-302 through 10-309, inclusive, of the Courts and Judicial Proceedings Article, to take a test if the person should be detained on suspicion of driving or attempting to drive while under the influence of alcohol, while impaired by alcohol, which so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person could not drive a vehicle safely, while impaired by a controlled dangerous substance, in violation of an alcohol restriction, or in violation of § 16-813 of this title.
>
> Pursuant to [TA] § 16-205.1(b)(1), an officer detaining a suspected drunk driver must advise the suspect of certain rights enumerated in that subsection and may not compel that suspect to take a chemical breath test. Section 16-205.1(b) further discussed the exact procedures an officer must follow if the officer has reasonable grounds to suspect the driver is under the influence of alcohol or drugs, including detaining the suspect, requesting a chemical breath and/or blood test and advising the suspect of administrative sanctions for refusal to take a requested test. If, as occurred in the case *sub judice*, the suspect refuses to take the chemical breath test, after being properly advised, § 16-205.1(b)(3) directs the officer to confiscate the suspect's driver's license, serve an order of suspension, issue a temporary license and inform the suspect of the suspect's right to a hearing and of the possible administrative sanctions.

(Quoting *Motor Vehicle Admin. v. Jones*, 380 Md. 164, 172-73 (2004)) (footnote omitted).

In this case, each appellant either refused to take or failed a test of her blood alcohol content after being stopped on suspicion of violating Maryland's drunk driving laws.[3] As required by statute, because of the refusal or failure, the officer took actions including: (1) confiscating the person's driver's license; (2) "[a]cting on behalf of the Administration, personally serving an order of suspension;" (3) issuing a temporary license; (4) informing the person that the temporary license is for 45 days; and among other required actions, (5) informing the person of the right "to request, at that time or within 10 days, a hearing to show cause why the driver's license should not be suspended . . . ." Each of the appellants was advised of the right to request a show cause hearing via the MVA's Advice of Rights form DR-15. The Advice of Rights form DR-15 states:

> You may request an Administrative Hearing at any time within 30 days of the date of the Order of Suspension to show cause why your driver's license or privilege should not be suspended. You must request a hearing within 10 days of the date of the Order of Suspension to insure that your privilege to drive is not suspended prior to your hearing. Your request for a hearing must be made in writing. You may use the "Hearing Request" form if available. Send your request to the Office of Administrative Hearings at 11101 Gilroy Rd., Hunt Valley, MD 21031-1301. You must include a check or money order for $150, which is the required filing fee, made payable to the "Maryland State Treasurer." Your request for a hearing will be invalid if submitted without the required $150 filing fee (or applicable fee waiver).

Appellants' complaint alleged that each appellant paid the $150.00 detailed in DR-15 to request an administrative hearing. Von Strauss paid the $150.00 on or about July 30, 2013, Kadir paid the $150.00 on or about October 30, 2013, and Gordon initially

[3] Pursuant to TA § 16-205.1(b)(3) "an alcohol concentration of 0.08 or more at the time of testing" constitutes a failure of the test.

included $15.00 in her request for a hearing on or about August 4, 2014. On or about August 28, 2014, Gordon's initial request was denied for failure to include the requisite $150.00 filing fee and an extension to properly request an administrative hearing by September 5, 2015, was granted. Gordon's second request for a hearing included the $150.00 filing fee and was granted.

Appellants' complaint alleged that the $150.00 was improper and the proper filing fee was $15.00. Appellants further alleged that the MVA negligently and fraudulently charged the improper filing fee. Thus, the complaint alleged three counts against appellee: (I) negligence in charging the incorrect fee; (II) violation of Article 14 of the Maryland Declaration of Rights[4] by charging a fee unauthorized by the Legislature; and (III) fraud in charging the incorrect fee.

On June 18, 2015, appellee filed its second motion to dismiss for failure to state a claim upon which relief can be granted. The motion asserted that the MVA has no duty in tort or by statute to protect appellants from economic loss, that the fees are being set and taken at the direction of the Legislature by OAH, that appellants failed to properly allege facts necessary to establish a cause of action for fraud, and that appellants failed to exhaust administrative remedies available to refund a filing fee.

On July 20, 2015, appellants filed an opposition to MVA's motion, arguing that the MVA has a "special relationship" with appellants as license holders, and therefore,

[4] Article 14 of the Maryland Declaration of Rights states: "That no aid, charge, tax, burthen or fees ought to be rated or levied, under any pretense, without the consent of the Legislature.

owed a due process duty by tort and statute to protect license holders defending their property rights. Appellants also argued that it was not the intent of the Legislature to create a fee of $150.00 for all initial hearings. Further, appellees alleged that jurors could reasonably conclude the knowledge and scienter requirements of fraud from the MVA's statement of a $150.00 fee, that the exhaustion of administrative remedies is inapplicable, and that leave to amend should have been granted.

On August 25, 2015, the circuit court held a hearing on the MVA's motion. Appellants argued that the MVA has a duty in tort to "provide information to assist [t]he drivers" and "to provide accurate . . . information." Secondly, appellants argued that the suspension challenges were "due process hearings" improperly charged as appeals. In response, appellee argued that "this duty that they're attempting to ascribe a tort duty to is really a ministerial government duty, and it's just not traditionally the basis of a tort duty." Finally, appellee argued that because one's driver's license is automatically suspended if not challenged, the hearing is an appeal of the MVA's administrative order to terminate the license, and is thus an appeal in the traditional sense. After hearing from the parties, the circuit court announced its ruling:

> With respect to Count 1 . . . there is no duty in tort . . . . Count 1 will be dismissed.
>
> Skipping to Count 3, two problems. The same thing, no source of the duty. Secondly, the generalized allegation that the government knowingly charged somebody too much money . . . does not allege fraud either at all, or with sufficient particularity . . . [s]o, Count 3 will be dismissed.
>
> Count 2 is a closer question, but . . . it is resolved by applying basic principles of statutory construction and common sense . . . . [Appellants] believe . . . that legally speaking these initial matters before the Office of

> Administrative Hearings are not appeals. And, since they're not appeals, there's no way that the MVA's properly charging . . . $150 a fee . . . .
>
> [W]hat you have here . . . is a suspension of a driver's license, and with the ordinary meaning of the word appeal, and as it is used in this context, and . . . used in the context of Maryland jurisprudence . . . this is an appeal.
>
> So, [there is] no violation of Article 14 of the Maryland Declaration of Rights. The complaint is dismissed with prejudice, without leave to amend.

On September 9, 2015, notice of this appeal was filed.

Additional facts will be included as they become relevant to our discussion, below.

Discussion

I. Exhaustion of Administrative Remedies

Appellants failed to exhaust their administrative remedies before the OAH. It is established Maryland law that "where the Legislature has provided an administrative remedy for a particular matter or matters, there is a presumption that the Legislature intended such remedy to be primary and intended that the administrative remedy must be invoked and exhausted before resort to the courts." *Furnitureland S., Inc. v. Comptroller of Treasury of State*, 364 Md. 126, 133 (2001) (citations omitted).

Under the comprehensive statutory scheme at issue here, when an individual requests a hearing after issuance of an order of suspension, the MVA delegates the final decision making authority to the OAH. TA § 12-104(e), 16-205.1(f); Md. Code (1984, 2014 Repl. Vol.), State Government Article ("SG") § 10-205; COMAR 11.11.02.07. The OAH, by authority granted from the General Assembly, sets the fee that the individual must pay to schedule the hearing. SG § 9-1604(b)(1)(vi)(1)(A); COMAR 28.03.01.01.

The OAH also provides a procedure to request a refund of a filing fee, albeit limited to grounds not advanced by the plaintiffs in this case. COMAR 28.03.01.08.

Further, the OAH, pursuant to the Administrative Procedure Act ("APA"), provides an aggrieved person, as each of the plaintiffs was here, with an administrative procedure subject to judicial review. Pursuant to TA § 12-209 and SG § 10-222, a party aggrieved by the final agency decision in a contested case may file an appeal in the circuit court for the county in which the licensee is a resident. Judicial review by the circuit court is on the record and is governed under SG § 10-222 and Maryland Rules 7-201 through 7-209. Finally, a party may file a petition for writ of *certiorari* to the Court of Appeals for final judicial review of the circuit court's decision. Md. Code (1973, 2013 Repl. Vol.), Courts & Judicial Proceedings Article §§ 12-305, 12-307.

Appellants failed to raise objections to the filing fee before the OAH and did not request a refund of the filing fees. Further, appellants did not follow the procedure

outlined under TA § 12-209[5] or SG § 10-222[6] to appeal the final decision of an agency to a local circuit court.

[5] In pertinent part, that section states:

> (a)(1) Any aggrieved party to a hearing may appeal from a decision or order of the Administration in accordance with this subsection.
>
> (2) If the matter concerns the license of an individual to drive and the individual is a resident of this State, the aggrieved party may appeal to the circuit court for the county in which the individual resides.
>
> (3) If the matter concerns any other license or privilege of a person, the aggrieved party may appeal to the circuit court for the county in which the principal place of business of the person in this State is located.
>
> (4) If the appeal involves a nonresident motorist, the aggrieved party may appeal to the circuit court for the county in which the motorist was convicted of the violation to which the matter relates.
>
> (5) If not otherwise provided in this section or elsewhere in the Maryland Vehicle Law, the aggrieved party may appeal to the Circuit Court for Anne Arundel County.

TA § 12-209(a) (footnote omitted).

[6] In pertinent part, that section states:

> (a)(1) Except as provided in subsection (b) of this section, a party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision as provided in this section.
>
> > (2) An agency, including an agency that has delegated a contested case to the Office, is entitled to judicial review of a decision as provided in this section if the agency was a party before the agency or the Office.
>
> (b) Where the presiding officer has final decision-making authority, a person in a contested case who is aggrieved by an interlocutory order is entitled to judicial review if: (continued…)

Appellants' counsel argues that objections to the filling fee were not raised before the OAH because TA § 16-205.1(f)(7)(i) lists the only eight issues that may be considered during a hearing. The limitations imposed by TA § 16-205.1(f)(7)(i) concern the material issue of the hearing, the suspension or revocation of a license. TA § 16-205.1(f)(7)(i) also states that the "person has the rights described in § 12-206 of this article." In turn, TA § 12-206 states that "a hearing held under the Maryland Vehicle Laws shall be conducted in accordance with Title 10, Subtitle 2 of the State Government Article (Administrative Procedure Act - Contested Cases)." (Footnotes omitted). SG § 10-201 *et seq*. details the administrative procedure prior to, during, and after a hearing before the OAH. The statutory scheme does not prohibit objections to procedural issues. In fact, according to appellants' counsel, Von Strauss did object to the filing fee during proceedings before the OAH. Thus, we disagree with appellants' assertion, and conclude

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> (1) the party would qualify under this section for judicial review of any related final decision;
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> (2) the interlocutory order:
>
> (i) determines rights and liabilities; and
>
> (ii) has immediate legal consequences; and
>
> (3) postponement of judicial review would result in irreparable harm.
>
> (c) Unless otherwise required by statute, a petition for judicial review shall be filed with the circuit court for the county where any party resides or has a principal place of business.

SG § 10-222(a)-(c).

that TA § 16-205.1(f)(7)(i) does not literally limit the scope of all possible discussions within a TA § 16-205.1 hearing, but rather that it limits the arguments against suspensions and revocations available to parties.

As an alternate remedy, appellants could have asserted a form of refund claim described by the Md. Code (1988, 2004 Repl. Vol.), Tax-General Article ("TG") § 13-901. This Court has repeatedly applied the "general doctrine that payments of taxes or other governmental fees or charges, voluntarily made under a mistake of law, are not recoverable in a common law action, and that any statutorily prescribed refund procedure is ordinarily the exclusive remedy[.]" *Bowman v. Goad*, 348 Md. 199, 203 (1997). TG § 13-901(a)(2) authorizes a refund claim by one who "pays to the State a tax, fee, charge, interest, or penalty that is erroneously, illegally, or wrongfully assessed or collected in any manner . . . ." This administrative remedy is exclusive because it sets forth the possibility of a statutory authorized refund and a special statutory remedy. *See Bowman*, 348 Md. at 202.

II. Motion to Dismiss

Even if appellants had exhausted their administrative remedies, their arguments still fail on the merits.

Appellants argue that the circuit court erred in granting the MVA's motion to dismiss. Specifically, appellants aver that a duty to truthfully inform drivers exists and that the OAH "show cause" hearing was not an appeal, and thus, they attempt to persuade us that the $150.00 filing fee is a violation of Article 14 of the Maryland Declaration of

Rights. Appellants further contend that the MVA acted fraudulently by knowingly charging appellants an excessive fee.

Maryland Rule 2-322(b)(2) permits a defendant to seek dismissal of a complaint if it "fails[s] to state a claim upon which relief can be granted." "We review *de novo* a trial court's granting of a motion to dismiss, to determine whether the complaint, on its face, discloses a legally sufficient cause of action." *Andrulonis v. Andrulonis*, 193 Md. App. 601, 612 (2010) (citations omitted); *see also Clark v. Prince George's Cnty.*, 211 Md. App. 548, 557 (2013). "In conducting our analysis, we . . . accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Id.* at 612-13 (citation omitted). "Further, although the words of a pleading will be given reasonable construction, when a pleading is doubtful and ambiguous, it will be construed most strongly against the pleader in determining its sufficiency." *Lapides v. Trabbic*, 134 Md. App. 51, 56 (2000) (citing *Hixon v. Buchberger*, 306 Md. 72, 75 (1986)).

"Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven." *Higginbotham v. Pub. Serv. Comm'n of Maryland*, 171 Md. App. 254, 264 (2006) (citation omitted). "'In sum, because we must deem the facts to be true, our task is confined to determining whether the trial court was legally correct in its decision to dismiss.'" *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 384 (2009) (quoting *Adamson v. Corr. Med. Servs., Inc.*, 359 Md. 238, 246 (2000)).

A. Negligence

Appellants contend that TA § 16-205.1 was promulgated to protect the property and due process rights of drivers, thus creating in the MVA a duty to drivers. Specifically, appellants contend that the MVA owes a procedural duty to truthfully inform drivers of initial administrative hearings with only $15.00 filing fees. We disagree and hold that no such duty exists.

"It is well established that in order to set forth a claim for negligence, a plaintiff must allege the following elements: a duty owed by the defendant to the plaintiff, a breach of that duty, actual injury or loss suffered by the plaintiff, and that the injury or loss proximately resulted from the defendant's breach of the duty." *Pulliam v. Motor Vehicle Admin.*, 181 Md. App. 144, 153 (2008) (citations omitted). "Whether there is adequate proof of the required elements to succeed in a negligence action is generally a question of fact to be determined by the fact-finder, while the existence of a legal duty is a question of law to be decided by the court." *Id.* at 153-54 (citations omitted).

The Court of Appeals has set forth a two part test to determine whether a statute or a regulation gives rise to a tort duty as appellants allege that TA § 16-205.1 did here. "Evidence of negligence may be established by the breach of a statutory duty 'when the plaintiff is a member of the class of persons the statute was designed to protect and the injury was of the type the statute was designed to prevent.'" *Remsburg v. Montgomery*, 376 Md. 568, 584 (2003) (quoting *Erie Ins. Co. v. Chops,* 322 Md. 79, 84 (1991)). "Furthermore, the statute must 'set forth mandatory acts clearly for the protection of

a *particular class* of persons rather than the public as a whole.'" *Id.* (quoting *Ashburn v. Anne Arundel County,* 306 Md. 617, 635 (1986)).

It cannot be disputed that "[t]he General Assembly enacted TA § 16-205.1 'to reduce the incidence of drunken driving and to protect public safety by encouraging drivers to take alcohol concentration tests; the statute was not meant to protect drivers.'" *Thomas v. Motor Vehicle Admin.*, 418 Md. 280, 292-93 (2011) (quoting *Motor Vehicle Admin. v. Shepard,* 399 Md. 241, 255 (2007)); *see also Motor Vehicle Admin. v. Sanner*, 434 Md. 20, 32 (2013) ("Section 16-205.1 of the Maryland Transportation Article, also known as Maryland's 'implied consent' or 'administrative per se' law, was enacted to reduce the incidence of drunk driving and protect public safety."). While appellants are members of the "public," TA § 16-205.1 was not designed to protect drivers from procedural injury.

Further, under the public duty doctrine, "when a statute or common law imposes upon a public entity a duty to the public at large, and not a duty to a particular class of individuals, the duty is not one enforceable in tort . . . ." *Pulliam*, 181 Md. App. at 188 (citation omitted). TA § 16-205.1 imposes a duty on the MVA to protect the public at large from drunk drivers, not to create a procedural duty to truthfully inform drivers of administrative burdens, as contended by the appellants.

Alternatively, a duty can be created by the existence of a "special relationship" between the parties through: "(1) the inherent nature of the relationship between the parties; or (2) by one party undertaking to protect or assist the other party, and thus often inducing reliance upon the conduct of the acting party." *Remsburg,* 376 Md. at 589-90.

Here, there is nothing inherent in the nature of the relationship between drivers and the MVA to sufficiently create a special relationship, nor has the MVA induced reliance for protection by drivers. As such, no duty arises from a special relationship between these parties.

Even when viewed in the most favorable light, appellants failed to allege a recognized duty in the complaint. Thus, the circuit court did not err in dismissing with prejudice appellants' cause of action for negligence.

B. Violation of Article 14 of the Maryland Declaration of Rights

Next, appellants argue that the circuit court erred in dismissing with prejudice appellants' second cause of action because the MVA is not authorized to levy a fee under TA § 16-205.1 and because appellants did not request an "appeal" in the most literal sense. Appellants allege that there can be no appeal when they never had a "first-level hearing," and therefore, the $150.00 filing fee violated Article 14 of the Maryland Declaration of Rights. In response, appellee argues that the OAH is authorized to levy fees for administrative expenses and that the term "appeal" under SG § 9-1604(b)(1)(vi) pertains to an appeal of the automatic suspension of a driver's license authorized under TA § 16-205.1. We agree with appellee and hold that the circuit court did not err in dismissing with prejudice appellants' cause of action for violation of Article 14 of the Maryland Declaration of Rights.

"When this Court interprets a statute, our purpose is to effectuate the intent of the Legislature, and, in order to discern that intent, we look first to the plain meaning of the statute's language." *Comptroller of Treasury v. Sci. Applications Int'l Corp.*, 405 Md.

185, 198 (2008) (citation omitted). "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature. Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology." *Id.* (citing *Bowen v. City of Annapolis,* 402 Md. 587, 613 (2007)). "If the plain language of a statute is clear and unambiguous, we look no further." *Id.* (citation omitted).

TA § 12-104(e) states, in pertinent part:

> (e) The [Motor Vehicle] Administration may delegate to the Office of Administrative Hearings the power and authority under the Maryland Vehicle Law to conduct hearings under this article and render final decisions in hearings conducted under this article.

Meanwhile, SC § 9-1604(b) states in pertinent part:

> (b)(1) The Chief Administrative Law Judge may:
> . . .
> (vi) assess fees to cover administrative expenses as follows:
> 1. to file an appeal, a fee not exceeding:
> A. $150 for an appeal of a driver's license suspension or revocation related to a violation of the Maryland Vehicle Law . . . .

As for proper authorization by the Legislature to levy a fee, appellants correctly allege that TA § 16-205.1 does not authorize the MVA to levy a fee. But TA § 12-104(e) authorizes the MVA to delegate the power and authority to conduct hearings under the TA and render final decisions to the OAH. Under SG § 9-1604(b)(1)(vi)(1)(A), the General Assembly empowers the Chief Administrative Judge of the OAH to assess a fee up to "$150 for an appeal of a driver's license suspension or revocation related to a violation of the Maryland Vehicle Law" in order to cover administrative expenses. The

language clearly and unambiguously authorizes the OAH to levy fees for administrative hearings they conduct pursuant to a delegation by the MVA.

As for the amount of the fee, we must ascertain the meaning of the word "appeal" in SG § 9-1604(b)(1)(vi)(1)(A). If statutory language is "subject to more than one interpretation, it is ambiguous, and we resolve that ambiguity by looking to the statute's legislative history, case law, and statutory purpose." *Comptroller of Treasury*, 405 Md. at 198 (quoting *Opert v. Criminal Injuries Board,* 403 Md. 587, 593 (2008)). "When engaged in statutory construction and the pursuit of legislative intent, we consider the provision under review in light of the statutory scheme in an effort to avoid an illogical result." *Gomez v. Jackson Hewitt, Inc.*, 427 Md. 128, 156 (2012) (internal citation omitted).

TA contemplates two types of hearings. The first is detailed in TA § 12-202(a), which states:

> (a) Except as otherwise provided in § 16-205.1(f) of this article, if the Maryland Vehicle Law or a rule or regulation of the Administration provides that a license or privilege may be suspended or revoked only after a hearing, the Administration shall give the licensee:
>
> (1) Written notice of the hearing and any charge made; and
>
> (2) An opportunity to be heard in person.

(Footnote omitted). TA § 12-202 hearings arise under several sections of the TA, among them Article 15: Vehicle Laws – Licensing of Businesses and Occupations. The hearing in question and second type contemplated under the TA is detailed in TA § 12-203(a), which states:

> (a) If the Maryland Vehicle Law or a rule or regulation of the Administration provides that an applicant or licensee may request a hearing on refusal, suspension, or revocation of a license or privilege, the Administration shall give the applicant or licensee written notice under § 12-114 of this title of:
>
> (1) The refusal, suspension, or revocation; and
>
> (2) The right of the applicant or licensee to request a hearing.

(Footnote omitted).

TA § 12-202 requires the administration to give notice of the opportunity to request a hearing on the "suspension, or revocation of a license or privilege." This is exactly what the DR-15 form was designed to do, and exactly what it did for the appellants. Their individual violations of Maryland vehicle laws resulted in each the issuance of an order of suspension as directed under TR § 16-205.1(b) to each appellant. The DR-15 form was not a notice to appellants that they were each required to attend a hearing to determine if their license privileges were to be suspended, but that the suspension was a *fait accompli* if the driver failed to act. The DR-15 form was notice that appellants' license privileges were automatically suspended on the forty-sixth day following the issuance of a temporary license, which was the date of this arrest and the date of the orders of suspension. The DR-15 goes on to require "the person to request at that time or within 10 days a hearing."[7] As such, because the sanctioned suspension was

[7] The hearing on the suspension may necessarily be beyond 45 days and, therefore, the 45 day license would expire prohibiting the person from driving, unless the appeal was filed.

inevitable unless challenged, the hearing to challenge the automatic suspension authorized under TR § 16-205.1(b) is an appeal.[8]

The legislative history behind SG § 9-1604(b)(1)(vi)(1)(A) further supports that the legislature intended the show cause hearing before the OAH to be an appeal of the automatic suspension and not an initial "first-level" hearing.[9] The practical, and perhaps unintended, consequences of appellants' interpretation of "appeal" within SG § 9-1604(b)(1)(vi)(1)(A) would undermine the legitimacy of the automatic suspension sanction authorized throughout the TA. Their interpretation would require the MVA to greatly increase their administrative capabilities to enable the agency to hold "first-level" hearings for every violation before decisions can be appealed to the OAH. Furthermore, their interpretation would be counter to the legislative intent to reduce the "incidence of drunk driving and protect public safety." *Sanner*, 434 Md. at 32.

Courts shall "not interpret a statute to produce unusual or extraordinary results, absent the clear legislative intent to enact such a provision." *Lewis v. State*, 348 Md. 648,

[8] Appellants could have also participated in the Ignition Interlock System Program to modify their suspensions or been issued a restricted license. TA § 16-404.1. Once the Ignition Interlock System is installed, the driver must breathe into the device to measure breath alcohol concentration before the vehicle will start. Successful completion of the three month program is awarded with reissuance of the driver's license.

[9] The amendment to SG § 9-1604(b)(1)(vi)(1)(A) increasing the maximum hearing fee to $150.00 was part of the State and Local Revenue and Financing Act of 2012 (SB 1302 and HB 1802, respectively). The Fiscal and Policy Note for SB 1302, and a common sense reading of the Act's name reveals that the act was intended to increase revenue. The Senate Budget and Taxation Committee Floor Report on SB 1302 further shows that the Legislature intended and projected that a $25.00 increase to raise State revenue at least $497,500.00 in fiscal year 2013.

662 (1998). Therefore, the circuit court did not err in dismissing with prejudice appellants' cause of action for violation of Article 14 of the Maryland Declaration of Rights because the levying of the filing fee and its amount at $150.00 are both authorized by the Legislature.[10]

C. Fraud

Lastly, appellants contend that the circuit court erred in dismissing the claim that the MVA knowingly, and thus fraudulently, charged an incorrect filling fee. We disagree.

To properly plead a cause of action for fraud, a plaintiff must sufficiently allege:

> (1) that the defendant made a false representation to the plaintiff, (2) that its falsity was either known to the defendant or that the representation was made with reckless indifference as to its truth, (3) that the misrepresentation was made for the purpose of defrauding the plaintiff, (4) that the plaintiff relied on the misrepresentation and had the right to rely on it, and (5) that the plaintiff suffered compensable injury resulting from the misrepresentation.

Ellerin v. Fairfax Sav., F.S.B., 337 Md. 216, 229 (1995) (citation omitted). Moreover, "[m]ere conclusory charges that are not factual allegations may not be considered." *Lloyd v. Gen. Motors Corp.*, 397 Md. 108, 121 (2007) (citation omitted).

[10] Appellants further contend that, at all times relevant to this case, the required filing fee under COMAR 28.03.01.03 was $15.00. Appellants are correct, but at all times relevant to this case, the filing fee under SG § 9-1604(b)(1)(vi)(1)(A) could be up to $150.00 since amendments changing the amount went into effect on June 1, 2012. This inconsistency between the statute and the regulation is not dispositive and, at the end of the day, the "statutory provision[] trump[s] the regulation." *Salisbury Univ. v. Joseph M. Zimmer, Inc.*, 199 Md. App. 163, 173 (2011) (citation omitted). Notably, the December 10, 2015 amendment to COMAR 28.03.01.03 not only increased the $15.00 filing fee but clarified the existence of a $150.00 filing fee if appealing a driver's license suspension or revocation.

Appellants only allege that the MVA "knew that it was charging an appeal fee for an initial hearing." Regardless of the legality of the fee and its amount, their conclusory charge of fraud is insufficient. With the single allegation, given its most favorable interpretation, appellants' complaint fails to sufficiently allege any facts supporting the existence of the second and third elements of fraud. Accordingly, the circuit court did not err in dismissing with prejudice appellants' third cause of action for fraud.

III. Dismissal without Leave to Amend

Maryland Rule 2-322(c) provides that, "[i]f the court orders dismissal, an amended complaint may be filed only if the court expressly grants leave to amend." "[A]llowance of leave to amend is within the sound discretion of the trial court and . . . the lower court's ruling will not be disturbed in the absence of a clear showing of an abuse of discretion." *Wockenfuss v. Kasten Const. Co.*, 258 Md. 541, 546 (1970) (citations omitted). "Nevertheless, under Maryland Rule 2-341(c), amendments to pleadings are allowed 'when justice so permits.'" *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010) (citation omitted). To that end, the Court of Appeals has stated:

> Although it is well-established that leave to amend complaints should be granted freely to serve the ends of justice and that it is the rare situation in which a court should not grant leave to amend, *see Hall v. Barlow Corp.*, 255 Md. 28, 40-41, 255 A.2d 873, 879 (1969), an amendment should not be allowed if it would result in prejudice to the opposing party or undue delay, such as ***where amendment would be futile because the claim is flawed irreparably***. *See Robertson v. Davis*, 271 Md. 708, 710, 319 A.2d 816, 818 (1974).

Id. at 673-74 (emphasis added and footnote omitted). "A trial court should not grant leave to amend if the amendment would result in prejudice to the opposing party or

undue delay." *Hartford Acc. & Indem. Co. v. Scarlett Harbor Assocs. Ltd. P'ship*, 109 Md. App. 217, 248 (1996) (citations omitted).

The circuit court properly dismissed appellants' complaint without leave to amend because all causes plead fail as a matter of law, making any amendment futile. For all of the foregoing reasons, we affirm the circuit court's judgment.

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