Circuit Court for Montgomery County
Case No. 422167

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1692

September Term, 2016

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JESSICA M. BRODEY. ET AL.

v.

FEYNMAN SCHOOL, INC.

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Eyler, Deborah S.,
Berger,
Reed,

JJ.

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Opinion by Eyler, Deborah S., J.

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Filed: December 26, 2017

In the Circuit Court for Montgomery County, Jessica Brodey, the appellant, on behalf of herself and her two minor children, sued Feynman School, Inc. ("the School"), the appellee, for declaratory and injunctive relief. During the hearing on Brodey's request for a preliminary injunction, the court opined that it could not order the School to offer Brodey a contract for the new academic year and that it would make a final ruling on the request for declaratory judgment. The court denied Brodey's request for a preliminary injunction and "enter[ed] judgment in favor of [the School] as to declaratory judgment," without making a written declaration. It also denied Brodey's oral request for leave to amend her complaint to add a count for breach of contract.

Within ten days of the court's entry of judgment, Brodey filed a motion to alter or amend, asking the court to reconsider its denial of her motion for leave to amend. The court denied the motion and this timely appeal followed.

Brodey presents the following questions, which we have reordered and reworded:

I. Did the circuit court err by denying her request for leave to amend her complaint to add a claim for breach of contract?

II. Did the circuit court err by ruling in favor of the School on her claim for declaratory relief (1) at the hearing on the motion for preliminary injunction; (2) without declaring the parties' respective rights, in writing or otherwise; and (3) without holding an evidentiary hearing?

We answer the first question in the affirmative and shall vacate the judgment on that basis. With respect to the second question, we agree that the court erred by not issuing a written declaration of the parties' rights under the contract. We shall not remand for the court to do so, however, for reasons we shall explain.

## FACTS AND PROCEEDINGS

The School is a private school focused on educating academically gifted learners. On June 23, 2015, Brodey enrolled her two children in the School for the 2015–2016 academic year by entering into a contract with the School ("Contract").[1] The Contract consisted of two parts: the "2015–2016 Enrollment Contract" ("Enrollment Agreement") and the "Parent and Student Handbook" ("Handbook"), which, by its terms, "serves as part of the [Enrollment Agreement] and is binding upon signing."[2]

The Contract accepted enrollment of the Brodey children for the 2015–2016 academic year. The Enrollment Agreement expressly stated, "This Contract is for the 2015–2016 School Year only. [The] School has no obligation, express or implied, for re-enrollment in subsequent academic years." The Handbook addressed possible re-enrollment, stating:

> Re-enrollment
> In early February, parents of current students in good standing receive an electronic enrollment contract via email. Enrollment from year to year is not automatic and is contingent on the student's academic and behavioral standing as well as the student's and his/her family's support of the community standards, fulfillment of School financial obligations and the mission of the school.

[1] There were two contracts, one for each child, but they were materially the same.

[2] The Enrollment Agreement itself states: "Parent agrees on behalf of themselves and the Student to abide by the rules and regulations established and administered by the School . . . , including but not limited to Parent and Student Handbooks."

The Handbook also contained a section entitled "Parent Code of Conduct," which parents were required to abide. It provided:

> I understand that all members of the school community must behave in a way that supports the essence and character of Feynman School. Thus as a parent of a child enrolled at Feynman School:
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> - I will abide by school rules and policies and will support the vision, mission and philosophy of the school.
> - I will actively communicate with other members of the school community openly, directly yet respectfully, promptly, and constructively, without resorting to slander, defamation, libel, and/or rumor at school related events, off-site events, or social media outlets.
> - I will treat Feynman faculty and staff members with professional respect.
> - I will model appropriate ethical behavior for my children and others and will exemplify integrity, inclusion, compassion and respect for all.
> - I will commit to reading and responding to oral and written communication from the school.
>
> . . .
>
> If a parent is in violation of any part of the Code of Conduct, a conference will be requested by the Administration to discuss the issue. Upon the initial request of the meeting, written documentation will be kept of the violation as well as minutes from the conference. The Administration will act fairly to determine what course of action, if any, needs to be taken to resolve the issue.

On May 6, 2016, a dispute arose between Brodey and Robert Gold ("R. Gold"), the School's executive director. Brodey alleged that when she arrived at the School to pick up her children that day Susan Gold ("S. Gold"), the head of the School, asked to speak with her in her office. R. Gold followed S. Gold and Brodey into the office and verbally confronted Brodey. Brodey told them that she felt unsafe and that she would

schedule a meeting for another time with her husband. As Brodey was leaving the office, R. Gold told her that she was "banned."

Later that day, Brodey received an email from S. Gold telling her that her children would be allowed to finish out the academic year, but she was "no longer allowed on campus." S. Gold informed Brodey that this action was being taken because of "a false accusation [Brodey] made regarding R[. Gold]" and her "continued negative conversations" with other parents of students.

On May 10, 2016, S. Gold invited Brodey and her husband to attend a meeting at the School "to discuss the circumstances and reasons which led to the decision to ban . . . Brodey from school property and to determine whether the campus ban . . . will remain in place . . . or be lifted." A meeting was scheduled for May 18, 2016. In the meantime, Brodey retained an attorney, who contacted S. Gold on May 16, 2016. The next day, S. Gold informed Brodey and her attorney that the May 18 meeting would have to be postponed so she could also retain outside counsel. Due to scheduling conflicts, S. Gold suggested that a new meeting be held during the week of June 6, 2016. From the record, however, it appears that a new meeting was not scheduled.

On June 8, 2016, Brodey's attorney sent an email to S. Gold advising her that Brodey would be pursuing legal action against the School. Early the next morning, S. Gold responded that Brodey's "course of communication and behavior [was] very disruptive to the school" and that her "escalation of [her] complaints . . . rendered a collaborative relationship with [the School] impossible." S. Gold further informed

Brodey that her children were expelled and that the expulsion was to take effect immediately.

On June 9, 2016, Brodey filed suit against the School in the Circuit Court for Montgomery County. Without stating what rights she wanted declared, she sought a declaratory judgment to be entered "in [her] favor." She also sought injunctive relief; specifically, a temporary restraining order ("TRO"), a preliminary injunction, and a permanent injunction, each enjoining the School from banning her from the campus and from taking adverse actions against her children. That same day, Brodey filed a separate motion for a TRO. A hearing on the TRO motion was held the next day, June 10, 2016. Following that hearing, the court entered a TRO directing that Brodey and her children would be permitted to return to the School. The TRO was to remain in effect only until June 18, 2016, the last day of the 2015–2016 academic year.[3]

The court scheduled a hearing on Brodey's request for a preliminary injunction for July 12, 2016. On July 7, 2016, Brodey filed a supplemental motion for preliminary injunction that took issue with the School's "refus[al to] offer [Brodey] and her children a re-enrollment contract[,]" and that "demand[ed] that a Preliminary Injunction be granted

[3] The TRO also included a provision enjoining the School from "refusing to provide a new enrollment contract or continuing financial aid[.]" This provision appears to have resulted from the court signing Brodey's draft TRO. At the TRO hearing, the judge made no mention of re-enrollment contracts and only discussed Brodey's ban from campus and the expulsion of her children. Brodey has not sought to enforce that provision, which cannot be enforced in any event because the TRO expired on June 18, 2016.

in [her] favor." The School filed an opposition, arguing that under the Contract Brodey's children were not entitled to re-enroll.

At the hearing on the request for preliminary injunction, Brodey argued that her children would suffer "irreparable harm" if they were not allowed to re-enroll at the School because they were excelling there and Brodey could not find another school with a similar curriculum in which to enroll her children for the 2016–2017 academic year. She asserted that the School had not followed its own protocol when it failed to re-enroll the children and when it banned Brodey from campus. Brodey reasoned that

> the contract process was not followed and [she] is entitled to some sort of due process here, and it is an estoppel matter . . . and a matter of fairness and substantial justice that there be some kind of action that is taken by the school for the benefit of the education of [her] children.

The School retorted that under the terms of the Contract it had "no obligation, express or implied, for reenroll[ing Brodey's children] in subsequent academic years." Therefore, a preliminary injunction would be improper because Brodey could not show that she would likely be successful on the merits of her action against the School for declaratory relief.

In the middle of the hearing, counsel for the School asked the court "[u]nder Rule 15-505(b) . . . [to] accelerate [its] finding on the declaratory judgment and rule . . . to make a merits finding that th[e] [C]ontract does not require the school to offer a 16-17 contract." Brodey responded that an amendment of the complaint was "necessary" and that she was likely to bring additional claims "with regards to retaliation and to breach of contract as well as other potential claims."

The court ruled from the bench. It declined to grant a preliminary injunction, explaining that Brodey was "not able to show the likelihood of success in obtaining" a declaratory judgment in her favor because the court had "no authority to order that a contract [for the 2016–2017 academic year] be issued[.]" On that basis, the court also denied Brodey's request for declaratory relief, but opined that she did "have a remedy at law if [she] believe[d] that a contract is breached." The court added that it was unsure how Brodey would prove damages, but it was "not going to get into that[.]" Brodey asked the court for 60 days to amend her complaint. The court did not acknowledge the request, implicitly denying it.

On July 13, 2016, one day after the hearing, the court entered an order denying the motion for preliminary injunction and entering "judgment in favor of [the School] as to declaratory judgment." On July 22, 2016, Brodey filed a motion to alter or amend or to revise the judgment. She asked the court to specify that the denial of her claim for declaratory relief was without prejudice, with leave for her to file an amended complaint against the School, raising additional claims, such as breach of contract. The School filed an opposition to Brodey's motion, arguing that she had had ample time to amend her complaint before the hearing on the preliminary injunction. On September 16, 2016, the court entered an order denying Brodey's motion. This timely appeal followed.

## DISCUSSION

### I.

Brodey contends the court erred or abused its discretion by denying her request to amend her complaint to add a count for breach of contract or another such claim. She points out that when judgment was entered her case had only been pending for 34 days, the School had not yet answered the complaint, there had been no scheduling conference, and there had been no discovery. The judgment was entered following a hearing on a preliminary injunction that was consolidated with the declaratory judgment request orally, just before the court ruled. The court itself had noted during the hearing that Brodey had an adequate remedy at law for breach of contract. The court did not consider whether an amended complaint by Brodey would unfairly prejudice the School or whether Brodey had unduly delayed in seeking to amend her complaint.

The School responds that the court did not abuse its discretion by denying Brodey's request to amend her complaint to pursue money damages for breach of contract or such a claim. It argues that the court "recognized that no damages flowed from the purported breach of contract," so any amendment would be futile.

Under Rule 2-341(c), "[a]mendments shall be freely allowed when justice so permits." We review a circuit court's denial of a request for leave to amend for abuse of discretion, *see Higginbotham v. Pub. Serv. Comm'n of Maryland*, 171 Md. App. 254, 275–76 (2006) (quoting *McMahon v. Piazze*, 162 Md. App. 588, 598 (2005)), mindful "that leave to amend complaints should be granted freely . . . and that it is the rare

situation in which a court should not grant leave to amend." *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010). Leave to amend should not be allowed if it would cause prejudice to the opposing party or undue delay, or if a claim is irreparably flawed such that an amendment would be futile. *Id.* at 673–74

In light of our State's liberal amendment standard, we hold that the court abused its discretion by not granting Brodey's request for leave to amend her complaint. This is not a situation where, after long and drawn out litigation in which discovery has been fully pursued and trial is imminent, a plaintiff or counter-plaintiff seeks to amend to add a new claim that will move the parties back to square one. It is the opposite. The case had been pending for barely more than a month. Amending the complaint would not have prejudiced the School or caused undue delay. There would have been no reason for Brodey to have filed an amended complaint before the hearing on the motion for preliminary injunction, which only was expanded to cover the declaratory judgment count in midstream. And on the very limited information before it—which did not include any information about damages—the court could not express any meaningful opinion that an amendment to add a claim for breach of contract, or a related count, would be futile. The circumstances existing at the time of the hearing and immediately post-judgment clearly warranted leave to amend, and it was an abuse of the court's discretion not to grant it.

**II.**

Brodey also contends the circuit court erred by entering a declaratory judgment in favor of the School without setting forth the parties' rights in a written declaration; by ruling on the declaratory judgment claim at a hearing set for the preliminary injunction; and by ruling on the declaratory judgment claim without taking evidence.

The School responds that the court did not need to issue a written declaratory judgment because either there was no justiciable issue before the court, given that the 2015–2016 school year was over and therefore Brodey's rights in the Contract did not need to be construed, or because any issue that existed concerning those rights was moot. It points out that under Rule 15-505(b), "[b]efore or after commencement of the hearing on the preliminary injunction, the court may order that a trial on the merits be advanced and consolidated with the preliminary injunction hearing[.]" During the preliminary injunction hearing, counsel for the School asked the court to make "a merits finding that th[e] [C]ontract does not require the [S]chool" to offer a re-enrollment contract, to which Brodey did not object. Finally, Brodey did not request an opportunity to present evidence during the hearing.

We shall address these three arguments out of order. First, the record makes clear that Brodey did not object when the School's counsel requested that the court consider and decide the declaratory judgment count in the course of the hearing on the preliminary injunction. Brodey cannot now complain about the court's doing so when she did not

object below. Second, Brodey did not ask to present evidence and therefore cannot complain about that on appeal either.

With respect to the third and final argument, the Court of Appeals has

> reiterated time after time that, when a declaratory judgment action is brought, and the controversy is appropriate for resolution by declaratory judgment, the trial court must render a declaratory judgment. [W]here a party requests a declaratory judgment, it is error for a trial court to dispose of the case simply with oral rulings and a grant of . . . judgment in favor of the prevailing party.
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> The fact that the side which requested the declaratory judgment did not prevail in the circuit court does not render a written declaration of the parties' rights unnecessary [because] whether a declaratory judgment action is decided for or against the plaintiff, there should be a declaration in the judgment or decree defining the rights of the parties under the issues made.

*Harford Mut. Ins. Co. v. Woodfin Equities Corp.*, 344 Md. 399, 414 (1997) (citations and quotations omitted). A written declaration is necessary so the parties and the public have fair notice of what the court has determined. *Secure Fin. Serv., Inc. v. Popular Leasing USA, Inc.*, 391 Md. 274, 282 (2006) (quoting *Allstate v. State Farm*, 363 Md. 106, 117 n. 1 (2006)).

The School is correct that a court should not render a declaratory judgment when there is no justiciable controversy or a case is moot. *See id.* at 280–81 ("[A] justiciable controversy is a prerequisite to the maintenance of a declaratory judgment action."); *Stevenson v. Lanham*, 127 Md. App. 597, 612–13 (1999) (declaratory judgment not proper when dispute is moot). That was not the situation here, however. Part of what Brodey was seeking was a declaration that the Contract entitled her to receive an offer from the School of enrollment for her children for the next (2016–17) school year.

During the preliminary injunction hearing, the court orally ruled that the Contract did not afford Brodey any right to re-enroll her children at the School. This was a ruling on a justiciable controversy that was ripe, live, and not moot. It also was a correct interpretation of the Contract, which clearly and unequivocally states that it covers only the 2015–2016 school year and that the School has "no obligation, express or implied, for re-enrollment in subsequent academic years." The court did not put this declaration in writing, however, which it plainly was required to do.

Although ordinarily, when a court has failed to put a declaration of rights in writing, we would remand for the court to do so, we shall not in this case, because the court will be faced with additional issues about the meaning of the Contract on remand after the complaint is amended to add a count for breach of contract. Whether the Contract gave Brodey a right to re-enroll her children for the next school year is an issue that was decided against her by the circuit court, properly, and is the law of the case. It may not be resurrected on remand. Whether the Contract gave Brodey, and her children, other rights and, if so, whether any of those rights were breached are not questions that the court decided and may be raised in the course of a breach of contract claim.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID APPELLEE.**