Circuit Court for Washington County

21-C-15-54208 ER

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2306

September Term, 2016

TONY O. GLADHILL, ET AL.

v.

ROBERT E. GEER, ET AL.

Wright,
Reed,
Shaw Geter,

JJ.

Opinion by Wright, J.

Filed: April 20, 2018

Appellants, Tony Gladhill, Patti Gladhill, and Jean Gladhill (the "Gladhills"), appeal the grant by the Circuit Court for Washington County of a motion for summary judgment in favor of appellees, Robert and Melanie Geer (the "Geers"). The Gladhills ask the Court two questions:

> 1. Did the circuit court err in granting summary judgment in favor of the Geers on the grounds of *res judicata*?
>
> 2. Did the circuit court err in not applying the declaratory judgment exception to the present action?

For the reasons below, we affirm the ruling of the circuit court.

BACKGROUND

The Gladhills' property is on Live Oak Lane, a private unpaved roadway that connects their land with Pectonville Road, a public road. Live Oak Lane crosses over land owned by the Geers. In the summer of 2012, the Geers learned that the Gladhills intended to construct a modular home on their land, and they installed wooden and metal posts on both sides of Live Oak Lane. The posts obstructed extra wide vehicles from using the private roadway.

Jean Gladhill signed a contract for the delivery and construction of a doublewide modular home on her property on Live Oak Lane in September 2012.[1] The proposed delivery date was in November 2012. The home was to be delivered on a flatbed trailer in two sections, with each section measuring approximately thirteen to fourteen feet wide.

[1] Jean Gladhill has a life estate in one of the three parcels owned by Tony and Patti Gladhill.

The posts the Geers installed on each side of Live Oak Lane barred delivery of the two sections of the doublewide home via Live Oak Lane.

After the Geers did not respond to the Gladhills' request to remove the posts, the Gladhills filed a declaratory judgment action on October 10, 2012 (the "2012 suit"), seeking a declaration that a prescriptive easement exist over the Geers' land, which is concomitant with Live Oak Lane, for ingress to and egress from the Gladhills parcels. The 2012 suit also sought injunctive relief.

On October 10, 2012, the circuit court issued a temporary restraining order directing the removal of the posts. On November 9, 2012, the court issued a preliminary injunction ordering the Geers to "remove the post[s] blocking access to the roadway for wider vehicles." The Geers removed the posts on January 15, 2013.

After a bench trial on June 3 and 4, 2013, the circuit court issued an order declaring an easement by prescription serving the Gladhills' parcel and crossing the Geer's land. The order further enjoined the Geers from "taking any action which would interfere with the uses of the prescriptive easement . . . set forth in this Order . . . and from erecting post[s] or obstructions which would interfere" with those uses.

On July 11, 2015, the Gladhills filed the complaint, from which this appeal arises, alleging that the Geers wrongfully interfered with their use and enjoyment of the easement over the Geers' land (the "2015 suit"). The alleged interference in the complaint was the Geers' obstruction of Live Oak Lane with posts, which prevented the use of extra wide vehicles necessary for the delivery of the modular home that Jean Gladhill purchased. To deliver the home to the Gladhills' property, they constructed a

temporary road across the parcel of land lying to the west of the Gladhills' property. Using the temporary road, the Gladhills began construction of the home on their property on December 5, 2012. The damages sought in this action were the cost of constructing the temporary access road and the cost of restoring the property through which the road was cut.

On January 29, 2016, the Geers filed a Motion for Summary Judgment, and in reply, the Gladhills filed a memorandum in Opposition to Defendant's Motion for Summary Judgment. On April 18, 2016, the circuit court held a hearing on the motion, and on December 9, 2016, the court granted the Geers' motion and ordered that the Gladhills' claim for damages was "barred by *res judicata* and the declaratory judgment exemption is not applicable."

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

DISCUSSION

I.

We review *de novo* a circuit court's grant of summary judgment. *Reiter v. Pneumo Abex, LLC*, 417 Md. 57, 67 (2010). "Summary judgment is proper where the trial court determines that there are no genuine disputes as to any material fact and that the moving party is entitled to judgment as a matter of law." *Laing v. Volkswagen of Am., Inc*., 180 Md. App. 136, 152 (2008). *See also* Md. Rule 2-501(a).[2] The parameter

[2] Md. Rule 2-501(a) states:

(a) Motion. Any party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to

for appellate review is determining "whether a fair minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed to trial [.]" *Laing*, 180 Md. App. at 153. Additionally, "if the facts are susceptible to more than one inference, the court must view the inferences in the light most favorable to the non-moving party." *Id*. "An appellate court ordinarily may uphold the grant of a summary judgment only on the grounds relied on by the trial court." *Ashton v. Brown*, 339 Md. 70, 80 (1995). Specifically, whether *res judicata* bars a particular action is a question of law, which we review *de novo*. *See Davdison v. Seneca Crossing Section II Homeowner's Ass'n, Inc*., 187 Md. App. 601, 633 (2009) ("The defense of *res judicata* is before 'the court as a question of law.' '[W]e review questions of law *de novo*.'") (Citations omitted).

The Gladhills argue that the circuit court erred in dismissing their complaint, asserting that it is not barred by *res judicata*. Both parties concede that the first and third prong of the conjunctive *res judicata* test are satisfied, because the parties in the present matter are the same parties in the present litigation, and there was a final judgment on the merits in the prior litigation. Therefore, the only disputed issue is whether the claim

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> any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record. A motion for summary judgment may not be filed: (A) after any evidence is received at trial on the merits, or (B) unless permission of the court is granted, after the deadline for dispositive motions specified in the scheduling order entered pursuant to Rule 2-504(b)(1)(E).

presented in the current action is identical to that determined, or that which could have been raised and determined, in the prior litigation. The Gladhills aver that the second element required for *res judicata* is not satisfied because the 2012 suit was brought to determine the existence of a prescriptive easement, and an injunction barring interference with the use of the easement, whereas the present action is about the wrongful interference with the easement and the damages that flowed from that interference.

The Geers contend that the circuit court properly dismissed the Gladhills' complaint because it was barred by *res judicata*, asserting that the 2015 suit involved the same parties and the same subject matter as the 2012 suit. They further aver that all the Gladhills claims could have been raised in the 2012 suit, because the Gladhills were aware of the alleged damages they incurred in December 2012, making it incumbent upon them to amend their complaint to include damages. We agree.

Res judicata ("a thing adjudicated") is "[a]n affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been — but was not — raised in the first suit." BLACK'S LAW DICTIONARY (10th ed. 2014). "The doctrine of *res judicata* 'avoids the expense and vexation attending multiple lawsuits, conserves the judicial resources, and fosters reliance on judicial action by minimizing the possibilities of inconsistent decisions by preventing parties from relitigating matters.'" *Grady Mgmt., Inc. v. Epps*, 218 Md. App. 712, 737 (2014).

The Court of Appeals advises us:

> The doctrine of *res judicata* consists of three elements: (1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation. Thus, the doctrine bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation.

Spangler v. McQuitty, 449 Md. 33, 65 (2016).

The only element of *res judicata* contested in the present case is if "the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation."[3] The test for what constitutes an identical claim was set forth in *Kent Cty. Bd. of Educ. v. Bilbrough*, 309 Md. 487 (1987). In *Bilbrough*, the plaintiff initially brought a federal court action alleging, "he was terminated for political activity on behalf of candidates for election to the Board [of Education] who were favorable to the then incumbent county superintendent of schools." *Id.* at 490. The federal court entered summary judgment for the defendants, however, the subsequent Maryland action involved invasion of privacy claims. In *Bilbrough*, we relied on *MPC, Inc. v. Kenny*, 279 Md. 29, 33-34 (1977), and the "same evidence" test in

[3] For the sake of totality, we find that the parties in the current litigation are the same as the parties in the 2012 suit. We also find that there was a final judgment in the 2012 suit, because the circuit court granted the Gladhills both a declaratory judgment and injunctive relief.

holding that a plaintiff's second suit against the defendants was not barred by *res judicata*. *Id*.

While the Court of Appeals upheld our decision in *Bilbrough*, they expressed concern "that sole reliance on the same evidence or required evidence analysis to determine if the same claim is involved in two actions may improperly narrow the scope of a 'claim' in the preclusion context," and instead adopted the transaction test. *Bilbrough*, 309 Md. at 494.

In adopting the transaction test in *Bilbrough*, the Court quoted approvingly from § 24 of the Restatement (Second) of Judgments, which provides:

> (1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar (see §§ 18, 19), the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.
>
> (2) What factual grouping constitutes a *"transaction," and what groupings constitute a "series," are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.*

Id. at 498 (*citing* Restatement (Second) Judgments § 24 (1982)) (emphasis added); *see also Gertz v. Anne Arundel County*, 339 Md. 261, 269 (1995) ("[W]e adopted the transaction test of § 24 of the Restatement (Second) of Judgments as the basic test for determining when two claims or causes of action are the same[.]").

Under the transaction test, a "claim" includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of

connected transactions, out of which the claim arose. *Boyd v. Bowen*, 145 Md. App. 635, 656 (2002). Accordingly, once the claim is extinguished, any such rights of the plaintiff to such remedies are also extinguished. *FWB Bank v. Richman*, 354 Md. 472, 493 (1999). In weighing the transaction test factors set forth in *Bilbrough* against the facts set forth in this case, we are not persuaded that the circuit court's ruling on the motion for summary judgment should be disturbed.[4]

We shall first address whether the facts are related in time, space, origin, or motivation. It is clear that the alleged damages that the Gladhills filed suit for in 2015 arose from the Geers actions in 2012. The Gladhills aver that the 2012 suit and the current suit are temporally distinct, because the 2012 suit involved the prescriptive easement and historical use of the properties now owned by the Geers and Gladhills; whereas the 2015 suit solely involves the damage caused by the Geers obstruction of Live Oak Lane, which prevented the Gladhills' use of the road for delivery of their home. In terms of motive, the Gladhills assert that the motivation for the 2012 suit was to establish

[4] The Comments that follow the Restatement warns us that it is a fool's errand to demand precision when applying the transaction test:

> *Transaction: application of a pragmatic standard.* The expression "transaction, or series of connected transactions," is not capable of a mathematically precise definition; it invokes a pragmatic standard to be applied with attention to the facts of the cases. And underlying the standard is the need to strike a delicate balance between, on the one hand, the interests of the defendant and of the courts in bringing litigation to a close and, on the other, the interest of the plaintiff in the vindication of a just claim.

Restatement (Second) of Judgments § 24 (1982).

their right to use Live Oak Lane, while the present action is to recover damages for the Geers interference with their use of Live Oak Lane.

We disagree with the Gladhills' characterization of the facts surrounding their decision to file two separate suits. First, the facts from the 2012 suit and the current suit are connatural, because they share the same origin—the posts the Geers installed on Live Oak Lane. Furthermore, the Gladhills' claim that their motive in the 2012 suit was to establish their right to use Live Oak Lane is unavailing, because their 2012 suit sought relief beyond just a declaration of a right and included injunctive relief to order the Geers to remove the posts obstructing Live Oak Lane.

Next, we turn to whether the facts form a convenient trial unit. The Gladhills contend that there are two convenient trial units, the 2012 suit where they sought to establish their entitlement to an easement and injunctive relief, and the current suit where they seek compensatory damages. A more convenient trial unit would be one where the Gladhills sought a declaratory judgment for the prescriptive easement; injunctive relief to remove the posts obstructing Live Oak Lane; and damages for the cost of the temporary road required to deliver the home. The damages sought in the present action occurred while the 2012 suit was ongoing. Even if two separate suits are convenient, we must weigh any convenience of one of the parties against the desire to conserve judicial resources.

Furthermore, the Comment to § 24 of the Restatement provides a criterion for evaluating this case:

> "In general, the expression [transaction] connotes a natural grouping or common nucleus of operative facts. Among the factors relevant to a determination whether the facts are so woven together as to constitute a single claim are their relatedness in time, space, origin or motivation, and whether, taken together, they form a convenient trial unit for trial purposes. *Though no single factor is determinative, the relevance of trial convenience makes it appropriate to ask how far the witnesses or proofs in the second action would tend to overlap the witnesses or proofs relevant to the first. If there is a substantial overlap, the second action should ordinarily be held precluded.*"

Smalls v. Maryland State Dep't of Educ., Office of Child Care, 226 Md. App. 224, 247 (2015) (emphasis in original). If this matter were to proceed to trial on the issue of damages, many, if not all, of the same witnesses that testified in the 2012 suit would be called to testify in the 2015 suit.[5] The only difference would be the scope of their testimony; but the subject matter of the Geers' posts and the Gladhills' prescriptive easement, would be the subject of the trial.

The Gladhills aver that the claim for damages in their 2012 suit would have been dismissed, because the damages they currently are seeking had not occurred at the time of filing. We find this argument unavailing as the Gladhills could have amended their complaint to include damages. While it is true that the prior suit was in October 2012, the alleged damages in the present suit "were a *fait accompli*" as of December 2012, and the case was not tried until June 2013.

[5] The Gladhills assert in both their brief and reply brief that "[e]xcept for Tony Gladhill, none of the other witnesses who would testify in the present action (Jean Gladhill, Carl Lehman, James Reed, Ralph Henson, and Joseph Fox) testified in the 2012 action." We have no way to validate this claim.

The Geers cite *Gonsalves v. Bingel*, 194 Md. App. 695 (2009), in support of their argument. In *Gonsalves*, the appellees sued the appellant in the Circuit Court for Anne Arundel County for breach of contract, because the appellee failed to close on the sale of a home. *Id* at 701. A month after selling the home, the appellees filed a motion to amend their complaint to add actual damages. *Id*. The court denied the motion, and four days later, the appellees filed a suit in the Circuit Court for Montgomery County, against the appellants. *Id*. at 702. The complaint set forth the same breach of contract claim, but sought damages denied by the Circuit Court for Anne Arundel County when it denied the motion to amend the complaint. *Id*. On appeal, this Court held that the case in the Circuit Court for Montgomery County was barred by *res judicata* and noted that "the proper mode of redress for a plaintiff aggrieved by the denial of leave to amend is to appeal that ruling upon the entry of final judgment." *Id*. at 719-20.

In the instant case, the Gladhills did not move to amend their complaint to include the damages they now seek on appeal.[6] Instead, similar to the *Gonsalves* appellees, they

[6] The Gladhills did not make a motion to amend their complaint, and, therefore we will not opine about whether they would have succeeded in amending their complaint to include the damages they now seek in the case. Nevertheless, we will note that Md. Rule 2-341(c) states:

> An amendment may seek to (1) change the nature of the action or defense, (2) set forth a better statement of facts concerning any matter already raised in a pleading, (3) *set forth transactions or events that have occurred since the filing of the pleading sought to be amended*, (4) correct misnomer of a party, (5) correct misjoinder or nonjoinder of a party so long as one of the original plaintiffs and one of the original defendants remain as parties to the action, (6) add a party or parties, (7) *make any other appropriate change. Amendments shall be freely allowed when justice so permits.* Errors or

filed the current suit, where they are relying on the declaratory relief granted in the form of a prescriptive easement, and the injunctive relief granted ordering the posts to be removed, to file a second suit in circuit court seeking damages. As we have stated *supra*, but now repeat, Maryland allows the affirmative defense of *res judicata* to avoid the drain on judicial resources and the inevitable legal confusion that arises when the same parties are re-litigating the same matters. If this matter were to proceed, the case would simply be a continuation of the 2012 suit, and it would be directly at odds with the purpose of *res judicata* which bars subsequent litigation not only of what was decided in the original litigation of the claim but also of what could have been decided in that original litigation. *Gertz*, 339 Md. at 269. Similar to the *Gonsalves* Court, we hold that the proper course of action in the instant case was to file an amended pleading to include damages, and if that motion was denied, *then* to file an appeal.

In their brief and reply brief, the Gladhills argue that the 2012 suit and the current suit should be treated as separate trial units because the 2012 suit was an *in rem* action to quiet title, and the current case is an *in personam* action for damages. While true, this is not dispositive. Under the transaction test, "Legal theories may not be divided and presented in piecemeal fashion in order to advance them in separate actions." *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 109 (2005). In addition, generally, it is permissible for a litigant to file declaratory relief, injunctive relief, and seek damages

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> defects in a pleading not corrected by an amendment shall be disregarded unless they affect the substantial rights of the parties.

(Emphasis added).

in one complaint. *See Miller v. Kirkpatrick*, 377 Md. 335, 340 (2003) ("Among various claims in the complaint, the Millers sought a declaration to quiet title, damages based on trespass, and an order requiring removal of the fences from the right-of-way."); *Webb v. Nowak*, 433 Md. 666, 669 (2013) (In a land dispute, the appellant sought compensatory and punitive damages, as well as damages under a common law theory for trespass.).

Finally, we shall consider whether treating the facts as separate units conforms to the parties' expectations. The Gladhills contend that they view the 2012 suit as "opening up the lane" and separate from the present action for damages. Conversely, the Geers contend that they believed the 2012 suit resolved all the Gladhills' claims. Although "much of the language in the case law dealing with claims and causes of action and transactions comes out of the context of commercial transactions and business dealings." *Smalls*, 226 Md. App. at 250, the perspectives apply with equal application in this case. We discern nothing in the record that objectively proves or disproves either parties' expectations, and we will not speculate beyond what each party has asserted in their briefs. However, irrespective of either of the parties' "expectations," under the transaction test, if two claims or theories rely upon the same set and one would expect them to be tried together, then a party must bring them simultaneously. *Norville*, 390 Md. at 109. Based on the facts in the record, the 2012 suit and the 2015 suit both rely on the same set of facts. Both cases flow from the positioning of posts restricting the Gladhills' use of Live Oak Lane.

Relying on the factors set forth in the transaction test, we hold that the Gladhills' 2015 suit is barred by *res judicata*, because the present action is one that could have been

raised in the 2012 suit against the Geers for obstructing Live Oak Lane. The Gladhills' complaint in the 2012 suit could have been amended to include their alleged damage incurred in December 2012 when they constructed a road to bypass Live Oak Lane, a throughway where they maintain a prescriptive easement for ingress and egress.

II.

Next, we turn to the second question of whether the circuit court erred in not applying the declaratory judgment exception to the 2015 suit. The 2012 suit included claims for a declaratory judgment and injunctive relief. The Gladhills aver that the 2012 suit is not barred by *res judicata*, because it should be exempted by the declaratory judgment exemption under the Maryland Uniform Declaratory Judgments Act ("Declaratory Judgments Act"). Md. Code (1973, 2013 Repl. Vol.), § 3-401, *et seq.,* of Courts & Judicial Proceedings Article ("CJ"). The Geers respond that the Declaratory Judgments Act does not shield the current suit from *res judicata,* because the 2012 suit sought more than just a declaratory judgment. We agree.

The Gladhills rely on *Bankers and Shippers Ins. Co. v. Electro Enterprises Inc.*, 287 Md. 641 (1980), and *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 202 Md. App. 307, 329 (2011), *aff'd*, 429 Md. at 387, to assert that this is a matter of first impression, because the Maryland appellate courts have yet to decide the preclusive effect of a declaratory judgment when the original action included a request for coercive relief like an injunction. Before we address, *Bankers* and *CR-RSC Tower I*, we examine the Declaratory Judgments Act on which the Gladhills' argument relies.

With respect to further relief after a court has awarded a declaratory judgment, the Declaratory Judgments Act states:

> (a) Further relief.- Further relief based on a declaratory judgment or decree may be granted if necessary or proper.
>
> (b) Application.- An application for further relief shall be by petition to a court having jurisdiction to grant the relief.
>
> (c) Show-cause order.- If the application is sufficient, the court, on reasonable notice, shall require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted.

CJ § 3-412. The statute's language is expansive enough to authorize a plaintiff to seek additional relief if it is deemed "necessary and proper." *Id*. The Gladhills are asking us to read the statute to allow a party seeking a declaratory judgment to then have legal recourse to seek additional relief later, even if they sought additional relief when the declaratory judgment was sought. Such a reading would allow the exception to consume the rule, as a litigant could then rely on a declaratory judgment action to bypass a *res judicata* defense even in instances where the subject matter and/or causes of action are identical to issues that could have or should have been raised in the previous litigation. *See Mycogen Corp. v. Monsanto Co.*, 28 Cal. 4th 888, 903 (Cal. 2002) ("[W]e find unpersuasive the view of the minority of courts that extends the declaratory judgment exception to cases involving *both* declaratory *and* coercive relief. Such an exception to *res judicata* principles would create uncertain preclusion rules and would threaten to swallow the rule against claim splitting, permitting a party to evade a *res judicata* bar

merely by appending a request for declaratory relief to a claim for specific performance or other coercive relief.") (Emphasis in original) (citations omitted).

The legislative history of the statute is instructive. The National Conference of the Commissioners on Uniform State Laws developed the Uniform Declaratory Judgment Act in 1922. *See Developments in the Law*, 62 Harv. L. Rev. 787, 791 (1949). Maryland adopted the Act in 1939, only adding one clause, which has no application to CJ § 3-412. *See* Richard W. Case, *Declaratory Judgments in Maryland*, 6 Md. L. Rev. 221, 226-27 (1942). A close reading of the prefatory note before the Uniform Declaratory Judgment Act, explaining its purpose, supports our holding. In the note the drafters opined:

> The purpose of this Act is really to prevent litigation. Under the Act any party to a contract, for instance, may have a judicial construction of the same even before a breach thereof, without undue expense and at a time when the effect of an adverse decision is not likely to prove disastrous. In truth, the Declaratory Judgments Act is nothing more than a bill to make it possible for a citizen to ascertain what are his rights and what are the rights of others before taking steps which might involve him in costly litigation. The purpose of the Act and its effect is to enable the citizen to procure from a court guidance which will keep him out of trouble and to procure that guidance with materially less expense than he would have to incur if he should wait until the trouble came before having recourse to the court.

UNIF. DECLARATORY JUDGMENTS ACT, Prefatory Note at 4 (1922) (*available at* www.uniformlaws.org/shared/docs/declatory%20judgments/udja%201922.pdf). *Also see Davis v. State*, 183 Md. 385, 388-89 (1944) ("The primary purpose of this Act is to relieve litigants of the rule of the common law that no declaration of rights may be judicially adjudged unless a right has been violated, and to render practical help in ending controversies which have not reached the stage where other legal relief is immediately available."). Here, when the Gladhills filed their 2012 suit, they sought to ascertain their

right as to the loss of use of their property caused by the Geers' poles blocking access to the road, but also went one step further and sought injunctive relief to remedy the injury.

Our reading of the statute and the history of the Declaratory Judgment Act informs our reading of the cited cases *Bankers* and *CR-RSC Tower I*, both of which provide relevant discussion. In *Bankers*, the appellant brought an action for a declaratory judgment in the Circuit Court for Washington County against the appellee claiming that its insurance policy did not cover tort claims nor a duty to defend against them. 287 Md. at 644. After the appellant lost, pursuant to CJ § 3-412(a), the appellees filed a suit in Washington County for the reimbursement of the attorney's fees and other expenses incurred in defending against the declaratory judgment action. *Id*. at 646. Ultimately, the court held that the traditional rules of *res judicata* were inapplicable, because it was a statutory action for further relief based on a declaratory judgment, pursuant to CJ § 3-412(a). *Id*. at 652. In making its holding, the Court also noted that, "the statutory scheme expressly permits a party to *bring one action requesting only a declaratory judgment* and then to bring a separate action for further relief based on the rights determined by that judgment." *Id*. at 653 (emphasis added). The Gladhills are correct in stating that in *Bankers* the Court expressly declined to address this issue, but we can glean guidance from the Court's opinion as to when a separate action may be brought. In the case before us, unlike in *Bankers*, the Gladhills sought not only a declaratory judgment in the first suit but injunctive relief as well.

In *CR-RSC Tower I*, the appellees sought and received a declaratory judgment and equitable relief. 202 Md. App. at 329. We decline to decide this issue before us now,

because in *CR-RSC Tower I* we held that "the express reservation provision in the earlier judgment prevents a *res judicata* bar." *Id*. at 330. However, in *CR-RSC Tower I*, we cited several cases, including *Laurel Sand & Gravel, Inc. v. Wilson*, 519 F.3d 156 (4th Cir. 2008), where the Fourth Circuit applied Maryland law under diversity jurisdiction and held that the *res judicata* doctrine did not apply when the prior action sought both declaratory and injunctive relief. *CR-RSC*, 202 Md. App. at 329.

In *Laurel Sand*, Laurel Sand & Gravel Inc. (Laurel), along with nine other licensed miners formed the Maryland Aggregates Association, and they argued that the Maryland Dewatering Act's ("Dewatering Act") contested case hearing process violated procedural due process as interpreted in *Maryland Aggregates Inc. v. State of Maryland*, 337 Md. 658 (1995). *Laurel Sand*, 519 F.3d at 160-61 (4th Cir. 2008).[7] Eleven years later after the law's enactment, the Maryland Department of Environment ("MDE") notified Laurel Sand that a shallow residential well in its zone was dry due to a decline in ground water, and informed Laurel Sand that under the Dewatering Act it was required to replace the well or lose its license. *Id.* at 161. Laurel Sand replaced the well and initiated a contested case hearing before an Administrative Law Judge ("ALJ"). *Id*. Laurel Sand did not prevail at the hearing, and MDE adopted the ALJ's finding. *Id.* Laurel Sand did not request judicial review. Instead, a year later Laurel Sand filed suit against Maryland's Secretary of the Environment in federal district court, arguing that the

[7] The Maryland Court of Appeals rejected the constitutional claims and dismissed the case.

Dewatering Act violated the Due Process and Takings Clauses of the United States Constitution.

Among other reasons, the federal district court dismissed Laurel Sand's action on the grounds that "*res judicata* precluded Laurel [Sand] from raising the same claims litigated in *Maryland Aggregates*." The Fourth Circuit upheld the federal district court's decision, and we find its rationale persuasive. In *Laurel Sand & Gravel*, the Fourth Circuit held that the Maryland's declaratory judgment act does in fact limit the preclusive effect of a declaratory judgment, nonetheless that preclusive effect is eviscerated when one seeks a declaratory judgment and some other coercive relief. *Id.* at 164-65. In deciding the case, the Fourth Circuit relied on *Bankers*, and it noted that "In *Bankers*, the Maryland Supreme Court adopted the Restatement Second of Judgments approach." *Id.* at 164.

The rationale and holding in *Laurel Sand* is consistent with Maryland's courts' interest in judicial economy and limiting piecemeal litigation. Many federal courts have similarly held that where a party obtains a declaratory judgment and coercive relief, the declaratory judgment exemption will not apply. (*E.g.*, *Stericycle, Inc. v. City of Delavan*, 120 F.3d 657, 659-660 (7th Cir. 1997) (applying Wisconsin law); *Cimasi v. City of Fenton*, 838 F.2d 298, 299 (8th Cir. 1988) (applying Missouri law); *Minneapolis Auto Parts Co. v. City of Minneapolis*, 739 F.2d 408, 410 (8th Cir. 1984) (applying Minnesota law); *Mandarino v. Pollard*, 718 F.2d 845, 847-849 (7th Cir. 1983) (applying Illinois law)).

In *Criste v. City of Steamboat Springs,* 122 F.Supp.2d 1183, 1189 (D. Colo. 2000), the court summarized the law nationwide as follows:

> "[T]he overwhelming majority of courts to consider this issue have held that where a party seeks coercive as well as declaratory relief, normal claim preclusion rules apply . . . . Most cases discussing the general declaratory judgment exception cite § 33 of the Second Restatement of Judgments . . . . [Comments c and d] make clear that where a party seeks both declaratory and coercive relief ordinary rules of claim preclusion should apply."

(Citations omitted). Many other state appellate courts, as well as federal courts, applying state law have followed the approach set forth in the Restatement. *See Andrew Robinson Int'l, Inc. v. Hartford Fire Ins. Co*., 547 F.3d 48, 56 (1st Cir. 2008) (collecting cases); *also see Boca Park Martketplace Syndications Grp., LLC v. Higco, Inc.*, 407 P.3d 761, 764-65 (Nev. 2017); *Sebra v. Wentworth*, 990 A.2d 538, 542 (Me. 2010); *Mycogen Corp.*, 28 Cal. 4th at 903.

Following many federal and state courts, and in the absence of a clear holding from Maryland courts on this issue, we are adopting the framework as outlined in the Restatement of Judgments § 33. The Restatement expressly recognizes that *res judicata* would be devoured by an exception for judgments granting declaratory and coercive relief, and therefore limits the exception to pure declaratory relief:

> When a plaintiff seeks solely declaratory relief, the weight of authority does not view him as seeking to enforce a claim against the defendant. Instead, he is seen as merely requesting a judicial declaration as to the existence and nature of a relation between himself and the defendant. The effect of such a declaration, under this approach, is not to merge a claim in the judgment or to bar it.

Restatement (Second) of Judgments § 33 cmt. c (1982). In contrast, where a plaintiff interpolates declaratory relief with an action for coercive relief, "[f]or *res judicata*

purposes the action should be treated as an adversary personal action concluded by a personal judgment with the usual consequences of merger, bar, and issue preclusion." *Id*. at cmt d. Allowing the exception to extend beyond purely declaratory relief runs afoul of the purpose of a declaratory action, which is to "provide a remedy that is simpler and less harsh than coercive relief." *Id*. at cmt c.

For the reasons above, we hold that the declaratory judgment exemption only applies when a litigant is seeking a pure declaratory judgment. Accordingly, we hold that the circuit court did not err when it did not apply the declaratory judgment exception to the 2015 suit. In the 2012 suit, the Gladhills did not seek past declaratory relief; rather, they sought declaratory relief and coercive relief in the form of an injunction.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLEES.