Circuit Court for Baltimore County
Case No. 03C16010433

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3071

September Term, 2018

JONATHAN AZRAEL, et al.

v.

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION, INC.

Graeff,
Leahy,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: June 19, 2020

In 2016, Appellee, the Maryland Agricultural Land Preservation Foundation, Inc. (the "Foundation" or "MALPF"), a state agency, granted Zastaria, LLC's request for a corrective easement. Zastaria was issued the Corrective Easement,[1] which authorized it to erect No Trespassing signs on its property. Appellants Jonathan Azrael and Myra Knowlton filed a petition for writ of mandamus in the Circuit Court for Baltimore County, seeking reversal of the Foundation's decision.[2] The Appellants argued four reasons why the Foundation erred in granting the Corrective Easement; three focused on the signs, but the fourth contended that the Foundation violated its own procedures and regulations in considering Zastaria's request.[3]

After two years of litigation, the circuit court dismissed the Appellants' petition as moot because the Legislature had enacted a law that allows all landowners subject to Foundation easements to erect No Trespassing signs (the "Sign Law"). Because the Appellants asserted that the Foundation ignored its own regulations in granting the Corrective Easement, and that issue is not rendered moot by the Sign Law, we shall reverse and remand for further proceedings.

[1] The Appellants refer to Zastaria's updated, October 2016 easement as a corrective easement. The Foundation refers to it as an amended and restated easement. The terms are synonymous here.

[2] A writ of mandamus is an appropriate remedy for review of a quasi-judicial order or action of an administrative agency when no other right of appeal is provided by state or local law. *See Heaps v. Cobb*, 185 Md. 372, 379 (1945).

[3] The Appellants' arguments to the circuit court, and the relief they requested, were rightfully submitted in their memorandum supporting the petition for writ of mandamus. *See* Maryland Rule 7-207.

FACTS AND PROCEDURAL HISTORY

The Appellants' home sits on a scenic two-acre lot in the "Hunt Country" area of Baltimore County. Their property is surrounded by Zastaria, LLC's farm, and access to the home is by a right-of-way through the farm. When Zastaria erected No Trespassing signs along the boundary fence between the properties in 2016, the Appellants objected. They eventually sought assistance from the Foundation, which owns an agricultural preservation easement ("the Easement") that encumbers Zastaria's farm.

The Foundation is an agency within Maryland's Department of Agriculture. *See* Md. Code (1974, Repl. Vol. 2016), § 2-502 of the Agriculture Article.[4] It preserves the state's agricultural land and economy by acquiring preservation easements through the Maryland Agricultural Land Preservation Fund. *See* § 2-504(3). If a given tract of land meets the statutory requirements for continued farming, the Foundation can attempt to purchase an easement. Participation in the easement program is competitive. *See Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 432 Md. 292, 298 (2013). Once the Foundation purchases an easement, the easement is "enforceable by the landowner, the MALPF, and its Board of Trustees." *Id.* at 299.

The Foundation currently holds over 2,000 easements, to "preserve agricultural land and . . . control the urban expansion which is consuming the agricultural land and woodland of the State . . . ." § 2-501.1(a). The Foundation has always used template

[4] Unless otherwise indicated, all statutes referenced come from the Agriculture Article.

easement forms to acquire its interests in agricultural properties. The template has evolved over time. Earlier iterations did not expressly address the use of No Trespassing signs, but in 2009 the Foundation adopted a template for future easements that explicitly authorizes them.

In 1991, the Foundation acquired the Easement from the former owners of the land on which Zastaria's farm now sits. The Easement covers 122 acres, and applies to all subsequent owners of the land, including Zastaria. Zastaria placed the signs in 2016, after it claimed that trespassers had encroached on its land. According to the Appellants, these signs are "clearly designed to harass and aggravate them," as they spoil their view, and are only visible from Azrael property. They claim their attempts to address the signs with Zastaria fell on deaf ears. After those attempts, the Appellants mailed a letter to the Foundation contending that the signs violated the Easement.

Shortly after the Appellants contacted the Foundation, Zastaria did too, requesting that the Foundation amend the Easement to conform with the current template, so that the No Trespassing signs would be expressly authorized. At the Foundation's Board of Trustees' next monthly meeting, the Board took up the request. Foundation staff introduced the matter and explained the benefits of the proposed amendments.[5] The Appellants then had an abbreviated opportunity to make their case, and requested that,

[5] In its request, Zastaria agreed to waive its right to request termination of the Easement after twenty-five years of the original grant. *See* § 2-514 (For easements approved prior to October 1, 2004, landowners may request termination after twenty-five years of the original grant. Easements approved after October 1, 2004 are perpetual and termination may not be requested).

rather than applying the current template language, the Board add language limiting the size, number, and spacing of Zastaria's signs.

The Board elected to amend the Easement, and issued Zastaria the Corrective Easement, which conforms with the current template. In declining the Appellants' request, the Board expressed concern about adjusting the template's language for individual properties, stating that easements "have to be treated the same." The Foundation memorialized the Board's decision in a letter to Zastaria dated October 5, 2016. Six days later, the Appellants filed a petition for writ of mandamus for judicial review of the Foundation's action by the Circuit Court for Baltimore County.

On December 5, 2017, the circuit court vacated the Foundation's "decision to enter into an Amended and Restated Easement with Zastaria," because the Appellants "were not afforded a meaningful opportunity to present [their] case and compile a record that is adequate for judicial review." The court remanded, and ordered the Foundation to conduct a hearing.

On April 10, 2018, while cross-motions to amend that order were pending, the General Assembly passed, and the Governor signed, the Sign Law. It applied to all properties subject to Foundation easements, and provided:

> A landowner, may, without the approval of the Foundation, erect and display on land subject to an easement under this subtitle a sign or any other outdoor advertising display measuring not more than 4 feet by 4 feet for the purpose of . . . [f]orbidding trespassing . . . .

§ 2-513(b)(11). The legislation also "[s]upersedes any inconsistent provisions of a deed or any other agreement granting an easement under this subtitle . . . ." *Id.* The Foundation subsequently moved to stay the proceedings until the effective date of the Act, October 1, 2018. Once the Act became effective, the court dismissed the case as moot.

The Appellants filed this timely appeal and present us with two questions:

> 1. Is Appellants' Petition challenging the Foundation's approval of a Corrective Easement authorizing "No Trespassing" signs on a specific property rendered moot because a statutory amendment permitted all landowners with Foundation easements to erect "No Trespassing" signs?
>
> 2. Should this case be remanded to the Circuit Court to rule on Appellants' contention that the Foundation's approval of a Corrective Easement must be reversed because the Foundation did not follow its own regulations in approving the Corrective Easement?

DISCUSSION

When reviewing the grant of a motion to dismiss, we decide, without deference, "whether the trial court was legally correct." *Blackstone v. Sharma*, 461 Md. 87, 110 (2018). Before we reach the substantive issues, we shall first address the Foundation's jurisdictional argument.

Jurisdiction

The Appellants filed their petition with the circuit court pursuant to Maryland Rule 7-402, seeking judicial review of the Foundation's actions. The Foundation contends that the petition was not properly before the court because the Board's decision to amend the

Easement was not a quasi-judicial order or action within the meaning of Maryland Rule 7-401.

Rule 7-401 limits Chapter 400 to "actions for judicial review of a quasi-judicial order or action of an administrative agency where review is not expressly authorized by law." The Court of Appeals has said that "an agency acts in a quasi-judicial function when . . . there is a deliberative fact-finding process with testimony and the weighing of evidence." *Maryland Bd. Of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island, LLC*, 425 Md. 482, 515 (2012). When determining whether an action is quasi-judicial in nature, we therefore "must focus on whether the [agency's] decision itself was made on individual grounds or general grounds." *Talbot County v. Miles Point Property, LLC*, 415 Md. 372, 391 (2010).

Here, the Appellants presented the Board with a possible violation of the Zastaria easement, and Zastaria submitted a request to amend said easement to cure any potential violation. If the Foundation found that "a violation has occurred or is ongoing" it "shall issue a written notice of violation to the property owner." Code of Maryland Regulations ("COMAR") 15.15.09.04. The Board heard testimony on the matter, with Foundation counsel presenting the benefits of amending the Easement, and the Appellants' requesting to limit any potential amendment. The Board chose to limit the Appellants' testimony, declined to investigate the potential violation, and instead elected to amend the easement.

We are not persuaded that the Board's decision was premised on general grounds only; that is, that it was simply conforming the Easement to the current template. If that

were the case, it stands to reason the Board would conform older easements in batches or *en masse*, rather than individually, to maintain conformity. Here, however, the Board held a hearing on one specific easement. It knew of a possible violation of that one specific easement, and after hearing from opposing parties, chose one party's preferred course of action. The Board's actions were based on the individual facts surrounding the Easement, and therefore were quasi-judicial. As such, the Appellants' petition falls squarely within Rule 7-402.

Question 1

Upon dismissing the Appellants' petition, the circuit court found that "the General Assembly explicitly contemplated and addressed the signs permitted under the corrective easement that was approved by the MALPF for which [the Appellants] complain of and request relief." The Foundation therefore contends that the Sign Law's express authorization of No Trespassing signs moots this appeal. The Appellants concede that the law allows Zastaria to display the signs without the Corrective Easement. They assert, however, that an existing controversy remains—whether the Foundation followed its own regulations in granting the Corrective Easement. The regulations that the Appellants assert were violated, all from COMAR 15.15.11.04, require that those seeking corrective easements submit: an application explaining how the corrective easement would enhance or have no effect on the agricultural operations on the easement; a boundary survey and tax map of the land; a written statement from the County program administrator describing whether the proposed corrective easement will enhance or have no effect on the land's

agricultural operations; and a letter of recommendation from the Baltimore County Land Preservation Advisory Board. Appellants claim that Zastaria did not submit any of these required documents.

Under Maryland law, "a case is moot when there is no longer an existing *controversy* when the case comes before the Court or when there is no longer an effective *remedy* the Court could grant." *Armstrong v. Mayor and City Council of Baltimore*, 409 Md. 648, 674 (2009) (cleaned up) (emphasis added). The *remedy* the Appellants sought from the circuit court was the reversal of the Foundation's grant of the Corrective Easement. The Sign Law was self-executing, allowing erection of signs without any change in the Easement itself. The Sign Law differs from the easement amendment in that the Sign Law, as a legislative action, can be revised at any time. The Legislature could, during any session, decide that it was wise to limit the number, placement, size, or appearance of the permitted signs, subject to any grandfathering. The easement, on the other hand, cannot be amended without the agreement of both parties—the Foundation and Zastaria or successive owner of the subservient property. In other words, even if future legislation was more restrictive in limiting the landowner's right to erect signs, rights granted to the landowner in a Corrective Easement would be unchanged.

The Appellants presented the circuit court with four arguments, or *controversies*, as to why reversal was warranted. They questioned:

> A. Should MALPF's of a corrective easement be reversed because MALPF's regulations for considering a request for a corrective easement were not met? COMAR 15.15.11.04.

B. Should MALPF's approval of a corrective easement sanctioning five large No Trespassing signs be reversed because it is inconsistent with MALPF's regulation prohibiting such signs on easements donated or granted to MALPF? COMAR 15.15.01.19(e).

C. Is MALPF's approval of a corrective easement sanctioning five No Trespassing signs unlawful because the proposed MALPF easement is subject to and conflicts with the recorded protective covenants which prohibit such signs?

D. Is MALPF's approval of a corrective easement sanctioning five large No Trespassing signs surrounding Petitioners' Property, and visible only to Petitioners, arbitrary and capricious because the signs do not enhance agricultural operations, are not necessary or appropriate to protect agricultural land and have substantial adverse effect on neighboring properties and open land space? Agric. § 2-501; COMAR 15.15.11.03.

The Sign Law moots Question B. Whether the Corrective Easement is inconsistent with Foundation regulations prohibiting No Trespassing signs on easements is moot because the Sign Law expressly allows for No Trespassing signs on land subject to Foundation easements. *See* § 2-513(b)(11). Likewise, the law also moots Questions C and D because it specifically overrides Foundation easements that prohibit signs.

Question A however, whether the Foundation followed its own regulations for considering a request for a corrective easement, is not affected by the Sign Law. It implicates COMAR regulations adopted by the Foundation, rather than the permissibility of No Trespassing signs. *See* COMAR 15.15.11.04. We discuss Question A in the context of *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

In *Accardi*, the Supreme Court held that an administrative decision is subject to invalidation because of the agency's "failure to exercise its own discretion contrary to existing valid regulations." *Id.* at 268. Maryland has adopted the doctrine and held that it is applicable to administrative hearings. *See Pollock v. Patuxent Inst. Bd. of Review*, 374 Md. 463, 467 (2003). The Foundation argues that the *Accardi* argument is barred by exhaustion, that "had appellants raised these objections at the agency level, the Board could have addressed those arguments or explained why the processes outlined in COMAR 15.15.11.04 would not apply."

It appears that the Foundation has confused the principles of waiver with those of exhaustion of administrative remedies. It is a longstanding principle of administrative law that one must ordinarily exhaust statutorily prescribed administrative remedies before resorting to the courts. *See Moose v. Fraternal Order of Police*, 369 Md. 476, 486 (2002). Here, the Appellants pursued the applicable administrative process, and did not seek judicial review until the Foundation made its final decision. The bar of exhaustion, therefore, does not apply.

To the extent that the Foundation contends that the *Accardi* argument is not preserved because it was waived, we are not convinced. The Foundation placed Zastaria's request to amend its easement on the Board's agenda for the September 27, 2016 meeting. COMAR 15.15.11.04 is titled "Corrective Easement Application Procedure," and applies to "Corrective Agricultural Land Preservation Easements." The Foundation authored this regulation and is subject to it. Azrael was provided "3–5 minutes to address the Board to

represent yourself and your neighbors" at the meeting. We are not persuaded that Appellants should be deemed to have foreseen the Board's failure to comply with its own regulations, and thus waived—during this short window—any complaint about this failure.

Because this issue, properly in front of the circuit court, is still an open controversy, we shall hold that the Sign Law did not render the Appellants' petition moot.

Question 2

The second question presented is whether we should remand to the circuit court for a finding on whether the Board's approval of a Corrective Easement must be reversed because the Board did not follow its own regulations. The Appellants argue that reversal is warranted. The Foundation counters that the regulations do not apply to this case, so the decision should stand. The Foundation goes into detail as to why each subsection of COMAR's "Corrective Easement Application Procedure" does not apply here. It also avers, without relying on any caselaw, that the procedures apply solely to amendments that benefit the landowner. Accordingly, it says, because the amendment Zastaria requested benefits the Foundation the Appellants' claim is without merit.

Before the Sign Law was passed, the circuit court had vacated the Foundation's decision, because the Appellants "[were] not afforded a meaningful opportunity to present [their] case and compile a record that is adequate for judicial review." Initially the circuit court remanded with instructions that the Foundation "conduct a hearing affording [the Appellants] an opportunity to be heard for a reasonable length of time as to submit

evidence to support [their] case." Only after the Sign Law was adopted, was that order stayed and the petition dismissed as moot.

It is vital to allow an agency to interpret a regulation in the first instance. It not only provides a complete record of interpretation for judicial review, but also "aids in judicial economy by preventing piecemeal and interlocutory appeals from administrative decisions." *Heery Int'l, Inc. v. Montgomery Cty.*, 384 Md. 129, 145 (2004). That is, an "administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." *Willow Grove Citizens Ass'n v. County Council of Prince George's Cty.*, 235 Md. App. 162, 168 (2017).

In order to afford the Board the opportunity to provide a complete record of its interpretation of the COMAR regulations, and why they should or should not apply here, we shall reinstate the circuit court's previous order vacating the Foundation's decision, and remand for a hearing before the Board.

CONCLUSION

Because the court erred in finding the petition moot, we reverse with instructions that the circuit court reinstate its previous order vacating the Foundation's decision and remanding to the Foundation's Board for further proceedings not inconsistent with this opinion.

We do not consider this a pyrrhic victory for the Appellants. Despite the Sign Law providing Zastaria with the ability to do exactly what the Appellants fought against in front

of the Board, we see good reason to remand for further proceedings. Enjoying the right, by statute, to place No Trespassing signs is not the same as enjoying that right by easement. If the Legislature were to decide to repeal or revise the Sign Law, then Zastaria may lose the right to post the signs (subject to any grandfathered rights), provided it had not received the corrective easement. *Cf. Maryland Agric. Land Pres. Found. v. Claggett*, 412 Md. 45, 63 (2009) ("The language of the easement can grant to the easement holder a good deal of discretion in the use of the easement or limit the use very narrowly.") (cleaned up).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS REVERSED, AND THE CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.