UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 114

September Term, 2013

WILLIAM J. GLASS, JR., *et al.*

v.

STATE FARM FIRE AND CASUALTY INSURANCE COMPANY, ET AL.

Meredith,
Leahy,
Sonner, Andrew L.,
(Retired, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: August 5, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On April 7, 2009, Par Vending Company employee Edward Calwell[1] was driving the company delivery van southbound on Maryland Route 91 in Carroll County when he lost control of the vehicle. Mr. Calwell crossed the double yellow line and collided with a vehicle driven by Tanya Jean Glass. Both Ms. Glass and her passenger, Kristen Bleach, were transported to a shock trauma medical facility for treatment. Shortly thereafter, Ms. Glass succumbed to her injuries.

Ms. Glass's surviving spouse, William J. Glass (acting in his individual capacity and as Personal Representative of his wife's estate), surviving child Christopher Wise (collectively "Appellants"), and passenger Kristin Bleach filed a personal injury negligence and wrongful death action in the Circuit Court for Carroll County on April 15, 2010.[2] Appellants initially filed their suit against Mr. Calwell and Par Vending Company, LLC, and later amended their complaint to add State Farm Fire and Casualty Company ("State Farm" or "Appellee") as a defendant, and to obtain a declaratory judgment construing a provision in Par Vending Company's Comprehensive Business Liability Policy ("the Policy"), issued by State Farm. The parties disputed whether the accident was covered under the business policy through an exemption to a coverage exclusion for bodily injury or property damage arising out of the use of any "non-owned auto." The appeal

[1] Throughout the record the employee/driver's surname is spelled both "Calwell" and "Caldwell." Because the circuit court uses the former spelling in its opinion and order, we too use it for consistency.

[2] Prior to the filing of this appeal, Kristin Bleach resolved her claims within the limits of the applicable State Farm Automobile Insurance Policy. Ms. Bleach is not a party to this appeal.

before us was taken from the court's decision following a bench trial limited to the declaratory judgment count. As we shall see, the court was presented with evidence of the unintended entanglement of two separate legal entities—Par Vending Company, a general partnership ("General Partnership"); and Par Vending Company, LLC ("the LLC")—and tasked with determining which was the legal owner of the vehicle driven by Mr. Calwell at the time of the accident. The circuit court ultimately denied Appellants' request for declaratory relief.

Appellants present the following issue for our review:

> Did the Circuit Court err in determining that the business policy did not provide coverage for the fatal accident because, as a matter of law, the vehicle involved in the collision was owned by [the General Partnership]?

We conclude the circuit court was not clearly erroneous in finding that Appellants failed to rebut the presumption of ownership generated by the title registration to the vehicle, and thus failed to prove the van was owned solely by the LLC. We must, therefore, affirm the circuit court's decision. However, due to a procedural defect we remand and instruct the circuit court to enter, in a separate order, an appropriate declaratory judgment.

BACKGROUND

In response to the April 15, 2010, complaint, the original, named defendants filed a joint answer on June 10, 2010. At the time of the accident, the General Partnership held two insurance policies from State Farm: an automobile policy and a business liability policy. Although State Farm was not a named defendant in the original complaint, it is undisputed that the automobile policy applies to the 2009 collision. The Comprehensive Business Liability Policy issued by State Farm, which contains liability coverage limits

beyond those contained in the automobile policy, was not invoked until its existence was discovered through deposition testimony. This discovery prompted Appellants to file a motion to amend the complaint, stay the negligence claim, and modify the scheduling order on January 19, 2011.

On February 14, 2011, the circuit court, upon Appellants' motion, ordered that the "[Appellants] shall be permitted to amend the Complaint to add an additional count for declaratory judgment[, and] determination of the [Appellants'] negligence counts will be stayed until this court has determined whether State Farm Fire and Casualty Company's business owner's liability insurance policy applies[.]" Thereafter, Appellants filed an amended complaint adding Count V, which requested a declaratory judgment interpreting the Policy to provide coverage for the accident because it involved a "non-owned auto."

State Farm was served with process on or about February 16, 2011. On March 11, 2011, State Farm filed its answer to Count V arguing, *inter alia*, that the Policy did not cover Appellants' claims because the vehicle involved in the accident was (1) owned by the insured (*i.e.,* Par Vending Company, LLC);[3] and (2) was operated by an insured (*i.e.*, Mr. Calwell).[4] State Farm also filed a third-party complaint seeking "a declaration that

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[3] State Farm amended its Answer on May 22, 2012, removing the averment that the Policy was owned by the LLC.

[4] Under the Policy, Section II Designation of Insured, an insured includes:

> 2.a. Your employees … but only for acts within the scope of their employment by you. However, no employee is an insured for:
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> * * *

(continued ...)

under the totality of the facts of this loss no coverage is owed . . . pursuant to the State Farm Business Policy."

On May 25, 2012, the circuit court allowed Appellants to amend the complaint a second time to name the General Partnership and its owners, Brian McGuire and Charles McGuire, as necessary parties to the declaratory action. On June 6 and July 13, 2012, the circuit court held a bench trial on the declaratory judgment requests filed by both parties. The issues centered on application of the Policy's business liability exclusion providing:

> Under Coverage L, this insurance does not apply:
>
> * * *
>
> 7. to bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any aircraft, auto or water craft owned or operated by or rented or loaned to any insured. Use includes operation and loading or unloading.
>
> This exclusion does not apply to:
>
> * * *
>
> e. bodily injury or property damage arising out of the use of any **non-owned auto** in your business by any person other than you.

(Emphasis added).

At the bench trial, all parties acknowledged that the two separate Par Vending entities remained in existence. Appellants advanced the argument that the Policy was issued to the General Partnership, but the van was really owned (despite title in the name

(... continued)

> (4) bodily injury or property damage arising out of the ownership, maintenance, use or entrustment to others of any non-owned auto or any agent or employee of an owner of any non-owned auto.

of the General Partnership) by the distinct entity Par Vending Company, LLC. The van, according to Appellants, qualified as a "non-owned" automobile for the purpose of the Policy's section 7(e) exemption.[5]

State Farm argued that through discovery it had become evident that the Policy and the van were both owned by the General Partnership. Neither party disputes the meaning or interpretation of the insurance contract, and the circuit court found there to be no ambiguity in the terms of the policy. Thus, the vital question in this case is, to which legal entity—the General Partnership or the LLC—does the van belong?

Par Vending[6]

The General Partnership was created in 1987 by Charles McGuire and Brian McGuire (collectively "the McGuires"). The General Partnership engaged in the business of supplying and stocking vending machines primarily through contracts with public school systems and government offices. In 1992, the General Partnership purchased two insurance policies from State Farm: an automobile policy and the Comprehensive Business Liability policy which is the focus of this appeal.[7] The General Partnership hired Mr.

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[5] According to the Definitions section of the Policy:

> non-owed auto means any auto you [the named insureds] do not own, lease, hire, or borrow which is used in connection with your business. However, if you are a partnership, a non-owned auto does not include any auto owned by any partner.

[6] Facts in this section are derived from the record and from testimony given at the trial on June 6 and July 13, 2012.

[7] The State Farm automobile policy is not at issue in these declaratory judgment proceedings.

Calwell in 1998 to drive a company owned vehicle, purchase products, and stock vending machines.

In 2004, the General Partnership purchased the van driven by Mr. Calwell at the time of the fatal collision. The van was financed through M&T Bank in the name of the General Partnership with Charles McGuire as co-signer, and it was insured through a State Farm automobile policy in the name of Charles McGuire. Significantly, the van, from the date of purchase through the time of the accident, was titled in the name of the General Partnership.

At the June 6, 2012, bench trial before the circuit court, Charles McGuire testified that going back to at least 2004, the General Partnership maintained a PNC checking account ending in 8065 which they used as a business account. Mr. McGuire further testified that all of the money from the business went through that account aside from a small portion of petty cash held back from the vending machine collections for minor expenses. According to Mr. McGuire, petty cash was used to pay for "gas and tolls and things of that nature." Larger expenses incurred by the General Partnership were paid from the PNC account.

In 2006, Charles and Brian McGuire formed Par Vending Company, LLC. Although both parties acknowledge that it was the intent of the McGuires to merge the General Partnership and the LLC, both parties also recognize that the two were never

properly merged.[8] As a result, both companies remain in existence as separate legal entities. Thereafter, the McGuires began conducting business in the name of the LLC and continued fulfilling the contractual obligations of the General Partnership.

The 2008 federal income tax returns for the business were filed under the name "Par Vending Co., LLC." However, the entity is self-identified on the return as a "Domestic general partnership," and the start date for the business is listed on the form as February 1, 1987. The 2009 income tax return provides the same information with the exception that

[8] In 2006, the requirements for conversion of a partnership into a limited liability company were articulated in Maryland Code (1975, 1999 Repl. Vol., 2006 Supp.), Corporations and Associations Article ("CA") § 4A-211, which provided, in pertinent part:

> (a) A partnership may convert to a limited liability company by filing articles of organization that meet the requirements of § 4A–204 of this subtitle and include the following:
>
> (1) The name of the former general partnership or limited partnership; and
>
> (2) The date of formation of the partnership and place of filing of the initial statement of partnership, if any, or certificate of limited partnership of the former general partnership or limited partnership.
>
> (b) The terms and conditions of a conversion of a general or limited partnership to a limited liability company shall be approved by the partners in the manner provided in the partnership's partnership agreement for amendments to the partnership agreement or, if no such provision is made in a partnership agreement, by unanimous agreement of the partners.

(Amended by 2012 Laws of Maryland ch. 599, § 1; 2012 Laws of Maryland, ch. 600, § 1.) It is undisputed that the McGuires did not complete the requisites of converting the General Partnership into the LLC in accordance with the statute. Where a proper conversion is accomplished, Maryland Code (1975, 2014 Repl. Vol.), Corporations and Associations Article § 4A-213 provides that the two entities "shall be deemed for all purposes the same entity that existed before the conversion." Thereafter, unless otherwise stipulated, all obligations and liabilities of the original partnership, as well as all property ownership rights, are vested in the surviving LLC. CA § 4A-213(b).

the entity is self-identified as a "Domestic limited liability company." No federal income tax return has been filed under the name of the General Partnership since 2007. The tax returns for "Par Vending Co., LLC" took full depreciation value for the van in both 2008 and 2009.

Sometime near the beginning of 2008, Charles McGuire asked PNC bank to change the name on the checks for the PNC bank account used by the General Partnership to Par Vending Company LLC. However, Mr. McGuire testified that he never alerted PNC that the company was changing—he only changed the name on the checks. After the change, monthly loan and insurance payments for the van were paid with checks bearing the name Par Vending Company LLC. Additional repair and maintenance costs for the van were made from the PNC account or from petty cash. The McGuires did not modify the title to the van; notify lienholder M&T Bank of any change in ownership of the vehicle; or notify State Farm of a change in ownership for the automobile policy.

Although the McGuires proceeded to conduct most regular business nominally as the LLC, they did not alter any of their contracts to reflect the new company organization. Nor did they alert State Farm of any change. Indeed, following the fatal accident it was "Charlie McGuire, d/b/a Par Vending Co." (i.e., the General Partnership), that signed over the title of the van to State Farm in conjunction with settlement of the property damage claim.

The Declaratory Judgment Proceedings

At the trial on June 6, 2012, the circuit court heard witness testimony and accepted evidence from all parties. Appellants presented the expert testimony of Daryl J. Sidle, Esq.

in the fields of corporate law, limited liability company law, and tax law. Mr. Sidle testified that he had "reviewed some tax returns of Par Vending Co, a general partnership, and Par Vending Co, LLC[,] . . . some cancelled checks[], . . . [and] some records of the State Department of Assessments and Taxation as they relate to Par Vending Co., LLC."[9] After his review of the documents, Mr. Sidle agreed that the steps necessary for converting the General Partnership to an LLC were not followed, and as a result the two legal entities remained distinct. Mr. Sidle also testified that, because only an owner may take the tax deduction for depreciation of the van, the presence of that deduction in the 2008 and 2009 tax returns filed in the name of the LLC is a significant factor in determining ownership of the vehicle. Finally, Mr. Sidle opined—based on the documents provided to him indicating that the LLC took the tax depreciation allowance and paid for insurance, repairs and related expenses—that the van was owned by the LLC.

After receiving proposed findings of fact along with written arguments from all parties, the circuit court commenced the second day of the declaratory judgment trial on July 13, 2012. Following arguments, the court resolved to review all of the evidence and provide a written decision on the matter. Finding that the Policy did not provide coverage for the April 7, 2009, accident, the circuit court denied Appellants' request for declaratory judgment.

[9] The only tax returns that appear in the record before this Court were filed under the name "Par Vending Co., LLC." No tax returns filed prior to 2008 or specifically filed under the name Par Vending Co, a general partnership, are contained in the record.

In its Memorandum Opinion and Order dated February 19, 2013, the circuit court set out 91 factual findings. Included among those findings were:

(10) on the date of the accident the Policy was in effect between State Farm and the General Partnership;

(30) on that morning Edward Calwell departed Charles McGuire's residence in the van in route to Liberty High School to stock the vending machines pursuant to the contract between the General Partnership and Liberty;

(33) from the date of its purchase continuously through the date of the accident the van was titled in the name of the General Partnership;

(34) the van was purchased in 2004 by Charles McGuire for use in the course of the General Partnership's business;

(35) on December 6, 2006, Charles McGuire formed the LLC on the advice of his accountant apparently with the intent of doing business in the future as an LLC, but there was no evidence of a plan to be followed as to how or when the change was to be made or whether the ownership of the van and other assets were to be transferred from the General Partnership to the LLC;

(63) from the time of its purchase through calendar year 2007 the General Partnership paid all expenses relating to the van;

(64) it is not clear from the evidence whether the expenses for the van were paid by the General Partnership or the LLC in calendar year 2008 and in 2009 through the date of the accident; most of the expenses relating to the van, including repairs, maintenance and insurance were paid using newer checks bearing the LLC name

during calendar years 2008 and 2009; some of these expenses were paid from petty cash which came from the monies collected from the vending machines;

(65) even though the loan for the van was in the name of the General Partnership the loan payments from 2008 through the date of the accident were paid with checks bearing the name of the LLC; the Bank was never notified of any change in ownership of the van, nor was the lien or loan obligation reassigned from the GP to the LLC;

(66) the LLC took the full allowable deduction for the depreciable value of the van on its tax 2008 and 2009 tax returns; in the tax context, depreciation is a significant factor in determining the ownership because it can only be lawfully taken by an owner;

(73) the Van was registered and titled through the State of Maryland in the name of the General Partnership; after the loss, the title was signed over to State Farm and Charles McGuire signed the title over to State Farm on behalf of the General Partnership;

(75) the LLC never attempted to procure automobile insurance for the van;

(77) from 2004 to the date of loss, the van was stored in the same location outside Charles McGuire's garage; no new keys were made; the keys were left overnight inside the garage at all times from 2004 to the date of loss;

(79) the named insured under the commercial auto policy covering the van from the date of purchase through the date of the accident was the General Partnership.

(83) the PNC checking account remained in the name of the General Partnership despite the change of name appearing on the checks; and

(90) on the date of the accident the General Partnership was still servicing 26 vending contracts not assigned to the LLC.

The court found that on the day of the accident Mr. Calwell was conducting business on behalf of the General Partnership, and that none of the high school contracts had been reassigned to the LLC in the more than one year period between the formation of the LLC and the date of the accident. The court reviewed the testimony and evidence showing that the McGuires were unaware of the requirements for a proper and legal conversion, and that they mistakenly believed they owned one business entity, not two. Noting that it is well settled that title registration merely raises a rebuttable presumption of ownership, the court nevertheless concluded:

> [T]hat [Appellants] have failed to meet their burden of proof and have not convinced the Court that the van in question was solely owned by the LLC and, therefore, falls under the non-owner exception to the exclusion of coverage under the business policy.

Appellants filed a Notice of Appeal on March 21, 2013. In response, Appellees filed a Motion to Strike Plaintiff's Notice of Appeal on the grounds that the denial of declaratory relief did not resolve all claims against all parties in the case and was, therefore, not a final judgment. On April 17, 2013, this Court denied that motion, and under Maryland Rule 8-602(e) remanded to the Circuit Court for Carroll County to consider whether to enter final judgment pursuant to Rule 2-602(b). The circuit court, on April 29, 2013, declined to enter final judgment. Appellants' May 8, 2013, motion for reconsideration was

also denied on July 15, 2013. Finally, after a hearing on September 10, 2013, the circuit court certified the February 19, 2013, judgment as final. On September 12, 2013, Appellants filed their timely Notice of Appeal. The Appellants now challenge the ruling and factual findings of the circuit court.

Declaratory Judgment

As a preliminary matter, we address a procedural error. The circuit court's decision—resolving Appellants' complaint for declaratory judgment on the merits—consists of a combined memorandum opinion and order stating:

> The Court concludes that [Appellants] have failed to meet their burden of proof and have not convinced the Court that the Van in question was solely owned by the LLC, and therefore, falls under the non-owner exception to the exclusion of coverage under the policy.
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> ORDER
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> Accordingly, it is, by the Circuit Court for Carroll County, this 19th day of February, 2013, ORDERED that [Appellants'] request that this Court issue a declaratory judgment determining the Policy No. 90-EU8578-6F provides coverage for the accident that occurred April 7, 2009 be, and it hereby is, denied.

The form of this memorandum opinion and order fails to constitute a proper declaratory judgment, because it fails to declare the rights of the parties in a separate document.

The Court of Appeals in *Harford Mutual v. Woodfin,* 344 Md. 399, 414-415 (1997), explained:

> [W]hen a declaratory judgment action is brought, and the controversy is appropriate for resolution by declaratory judgment, "the trial court must render a declaratory judgment." *Christ v. Department,* 335 Md. 427, 435, 644 A.2d 34, 38 (1994). "[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." *Ashton v. Brown,* 339 Md. 70, 87, 660 A.2d 447, 455 (1995), and cases there cited.
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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. As this Court stated many years ago, "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." *Case v. Comptroller,* 219 Md. 282, 288, 149 A.2d 6, 9 (1959).

In *Allstate Insurance Company v. State Farm Mutual Automobile Insurance Company*, the Court of Appeals further expounded that a declaratory judgment must be a separate written judgment:

> Nor, since the 1997 amendment to Maryland Rule 2-601(a), is it permissible for the declaratory judgment to be part of a memorandum. That rule requires that '[e]ach judgment shall be set forth on a separate document.' When entering a declaratory judgment, the court must, in a separate document, state in writing its declaration of the rights of the parties, along with any other order that is intended to be part of the judgment.
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> * * *
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> This is not just a matter of complying with a hyper-technical rule. The requirement that the court enter its declaration in writing is for the purpose of giving the parties and the public fair notice of what the court has determined.

363 Md. 106, 117 n.1 (2001); *see, e.g., Secure Fin. Serv. V. Popular Leasing USA, Inc.*, 391 Md. 274, 282 (2006) ("The trial court erred in dismissing the Complaint and in failing to enter a declaratory judgment defining the rights and obligations of the parties under the agreement in a separate document." (citation omitted)).

The circuit court's failure to enter a proper declaratory judgment is a procedural error, rather than a jurisdictional error. *Bushey v. N. Assurance Co. of Am.*, 362 Md. 626,

651 (2001). "This Court may, in its discretion, review the merits of the controversy and remand for entry of an appropriate declaratory judgment by the circuit court." *Id.* (citation omitted). We therefore remand for entry of an appropriate declaratory judgment.

DISCUSSION

Appellants contend that although there is a rebuttable presumption that the titleholder of an automobile is its owner, in light of the evidence presented, the circuit court erred in determining that the General Partnership was the owner of the van. State Farm avers that Appellants failed to present evidence sufficient to rebut the presumption of ownership and that the weight of the evidence establishes that the General Partnership was, at all times, the owner of the van.

The question of ownership of the van was for the finder of fact─in this case, the circuit court. Maryland Rule 8-131(c) provides:

> **(c) Action Tried Without a Jury.** When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

The Court of Appeals in *Falls Road Community Association, Inc. v. Baltimore County* articulated the appropriate standard for appellate review of a declaratory judgment:

> Following a circuit court bench trial on a declaratory judgment count, the appellate court reviews the case on both the law and the evidence. Maryland Rule 8–131(c). When a circuit court conducts a bench trial—as was done here on the declaratory judgment count of the complaint—an appellate court reviews the case on both the law and the evidence. Maryland Rule 8–131(c). The trial court's evaluation of the evidence is reviewed under a clearly erroneous standard. *Id.* A court's decision to grant or deny declaratory relief is generally assessed under an "abuse of discretion" standard. *Converge Services Group, LLC v. Curran,* 383 Md. 462, 477, 860 A.2d 871 (2004).

> However, a legal interpretation, such as the court's construction of the Declaratory Judgments Act in this case, is reviewed without according the circuit court any special deference.

437 Md. 115, 135 (2014).

An "owner" may be any "person having a legitimate legal, equitable, or possessory interest in the property," including a co-owner. *One Ford Motor Vehicle VIN No. 1FACP41A8LFZ17570 v. State*, 104 Md. App. 744, 751 (1995). The Court of Appeals has rejected the contention that the party in whose name an automobile is titled is the actual owner of an automobile, as a matter of law, irrespective of evidence to the contrary. *Liberty Mut. Ins. Co. v. Am. Auto. Ins. Co.*, 220 Md. 497, 500 (1959). Rather, the Court has held that the title registration to a vehicle merely raises a presumption of ownership, which may be rebutted. *Johnson v. Dortch*, 27 Md. App. 605, 617 (1975) (citing *Liberty Mut. Ins. Co.,* 220 Md. at 500 (1959)); *see also Bowser v. Resh*, 170 Md. App. 614, 631 (2006); *Keystone Ins. Co. v. Fidelity & Casualty Co. of New York*, 256 Md. 423, 427 (1970). "When a vehicle's ownership is at issue, whether the presumption of its ownership has been rebutted is 'clearly a question for the trier of the facts to decide,' . . . and its decision will not be disturbed on appeal unless it is clearly erroneous." *One Ford Motor Vehicle VIN No. 1FACP41A8LFZ17570*, 104 Md. App. at 751 (1995) (quoting *Liberty Mut. Ins. Co.*, 220 Md. at 501).

Appellants maintain that the evidence presented was sufficient to rebut the presumption of ownership in favor of the titleholder. They specifically challenge two of the circuit court's factual findings—64 and 83:

> 64. It is not clear from the evidence whether the expenses for the Van were paid by the [General Partnership] or the LLC in the calendar year 2008 and in 2009 through the date of the accident. Most of the expenses relating to the Van including repairs, maintenance and insurance were paid using newer checks bearing the LLC name during the calendar years 2008 and 2009. Some of the expenses were paid from petty cash which came from monies collected from the vending machines.
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> * * *
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> 83. PNC Bank was not notified of any name change or corporate restructuring. However, at some point more than one year after the LLC was formed, Charles McGuire "ran out of checks" and changed the name on the business' checks from Par Vending Co. to Par Vending Company, LLC. The business account remained in the name of the [General Partnership].

Appellants contend that finding 64 is erroneous because "all of the evidence adduced at trial—even evidence admitted by State Farm—established that the LLC, not the [General Partnership], was exclusively responsible for paying the van's expenses, maintenance, and insurance during 2008 and 2009." (Emphasis in original). As to finding 83, Appellants assert that because the evidence adduced at trial indicates that beginning in 2008 expenses related to the van, including loan payments, were paid with checks bearing the name "Par Vending Co., LLC," all such expenses were, in fact, paid by the LLC. However, these propositions sidestep analysis of whether the name appearing on the check and ownership of the account are determinatively related.

Expenses and the PNC Account

The testimony of Charles McGuire reveals that, prior to the creation of the LLC, the PNC bank account was established in the name of the General Partnership. There is no account agreement in the record to establish either the type or the terms of the account. It is clear that the PNC account is not a multiple-party account because Maryland Code (1980,

2011 Repl. Vol.), Financial Institutions Article ("Fin. Int.") § 1-204(b)(8)(ii) provides that a multiple-party account "does not include any[] [a]ccount established and designated for the deposit of funds of a corporation, partnership, joint venture, limited liability company, or other association of persons for business purposes." Further, there is no indication that the PNC account was established as a joint account or that at the time of the change in name that the LLC was added as a joint account holder. The testimony of Charles McGuire indicates that he requested that the name appearing on the checks be altered, but he did not notify the bank of any change in ownership of the account. Without further information, it appears the LLC functioned in a capacity similar to a "convenience person"—one who is authorized to draw upon the funds in the account but is not possessing an ownership interest in those funds by reason of that capacity. *See* Fin. Int. § 1-204(i); *Stanley v. Stanley*, 175 Md. App. 246, 265 (2007) (observing that the right of withdrawal does not necessarily create an ownership interest in the funds withdrawn).

Even were this Court to assume that a joint account was created by the addition of the name "Par Vending Co., LLC" to the face of the checks, such an addition would not divest the General Partnership of ownership. *See, e.g.*, *Wanex v. Provident State Bank of Preston*, 53 Md. App. 409, 413 (1983) (stating that the appellant did not relinquish his ownership rights in an individual business account by filing a signature card with the bank "merely permitting his daughter to withdraw money . . . [or] to sign checks drawn on the account."). Additionally, it is clear from the record that although the funds deposited into the PNC account were collected and deposited nominally by the LLC, those funds were in

significant part derived from the contracts of the General Partnership. As the circuit court noted in its factual findings (which Appellants do not dispute):

> 89. Likewise, the money from the Liberty High School vending machines starting in calendar year 2008 went into the PNC account ending in 8065 and was used to pay bills incurred in the vending machine business and the commissions to Liberty High School due under the contract.
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> 90. On April 7, 2009, the General Partnership had 26 contracts including the one with Liberty High School to stock vending machines, collect money, and pay commissions.
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> 91. The first such request for reassignment did not occur until June of 2009. The [General Partnership] entered into that contract in March, 2009 with Manchester Valley High School. Manchester Valley High School without objection agreed to the reassignment of the [General Partnership] interest in the contract to Peppermint Vending Co. LLC in which Donna McGuire was a member and had an interest.

We can perceive no error in the circuit court's findings that "[i]t is not clear from the evidence whether the expenses for the Van were paid by the [General Partnership] or the LLC in the calendar year 2008 and in 2009 through the date of the accident," and that the PNC business account remained in the name of the General Partnership.

The Tax Returns

Appellants further maintain that the evidence presented was sufficient to rebut the presumption of ownership by the General Partnership specifically because the 2008 and 2009 tax returns filed in the name of Par Vending Co., LLC claimed 100 percent of the depreciation value for the van. Thus, they argue, that the LLC and not the General Partnership owned the van at that point in time. Indeed, Appellants' expert, Mr. Sidle, testified, and the circuit court found, that "[i]n order to lawfully take a tax deduction for depreciation of the Van and the vending machines, the LLC would have to be the owner."

In response, State Farm asserts that the tax returns are insufficient evidence of ownership and that the circuit court did not find that the act of taking the tax depreciation, lawful or not, was sufficient to transfer ownership. Further, State Farm argues that "the tax records themselves are indicative of the degree of overlap between the [General Partnership] and the LLC."

First, we note that it is generally true, as the Fourth Circuit stated in *Guilford National Bank of Greensboro v. Southern Railway Company*, that:

> [a]lthough, . . . only a taxpayer who has a depreciable interest in property may take the depreciation deduction, certainly the fact that a claim is made for such deduction does not vest the ownership of a car, actually owned by someone else, in the one claiming such deduction.

319 F.2d 825, 828 (4th Cir. 1963) (citing *Reisinger v. Commissioner of Internal Revenue*, 144 F.2d 475 (2d Cir. 1944)). Second, the above-noted inconsistencies in the 2008 and 2009 tax returns present significant questions as to whether those returns are indeed the returns of the LLC or the General Partnership.

Filed under the name "Par Vending Co., LLC," both tax returns list the start date for the business as February 1, 1987—the date that the General Partnership was created. Although in 2008 the entity was self-identified as a "Domestic general partnership," it was self-identified in 2009 as a "Domestic limited liability company." According to State Department of Assessment and Taxation records, the LLC was forfeited on October 3,

2008, and not reinstated until May 8, 2009, and Appellants maintain that the General Partnership filed no tax returns for income derived during that period.[10]

Under Appellants' construction, the LLC filed tax returns (1) listing the wrong date of creation for the business; (2) misidentifying the company structure (for at least one year); (3) based on earnings it generated from the execution of the contracts of the General Partnership, which had not yet been assigned to it; and (4) while prohibited from conducting business in Maryland and dispossessed of the right to the use of its name. *See* Md. Code (1975, 2014 Repl. Vol.), Corporations & Associations Article § 4A-911. From a legal vantage-point these filings are contradictory and confusing, but they are consistent

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[10] Notably, both tax returns are filed under the same Employer Identification Number ("EIN"). An EIN is a nine-digit number that the Internal Revenue Service ("IRS") uses to identify specific taxpayers that are required to file various business tax returns. 26 C.F.R. § 301.7701–12. The Internal Revenue Code ("I.R.C.") requires that "[a]ny person required under the authority of this title to make a return . . . shall include in such return … such identifying number as may be prescribed for securing proper identification of such person." I.R.C. § 6109(a)(1). Additionally, 26 C.F.R. § 301.6109–1(a)(ii)(C) provides that: "[a]ny person other than an individual (such as corporations, partnerships, nonprofit associations, trusts, estates, and similar nonindividual persons) that is required to furnish a taxpayer identifying number must use an employer identification number." Any general partnership or LLC must apply for and obtain its own EIN for use on its tax returns. 26 C.F.R. § 301.6109–1(d)(2).

Although under certain limited circumstances an EIN may be transferred from one corporate entity to a surviving entity following a merger, that is not the case in the matter *sub judice*, because, among other reasons, it is undisputed that there was no merger and that the General Partnership was never terminated. *See, e.g.*, 26 C.F.R. § 301.6109–1(d)(2)(iii) (providing that by special rule, "a new partnership that is formed as a result of the termination of a partnership under section 708(b)(1)(B) will retain the employer identification number of the terminated partnership"). In the matter *sub judice,* the record provides no indication as to whether the EIN on the 2008 and 2009 returns is the one issued to the General Partnership or a new EIN. The record is also silent as to whether the LLC ever applied for or received its own EIN as required by IRS regulations.

with the testimony by the McGuires that they believed that they owned only one Par Vending entity.

Under the circumstances presented in this case, we agree with the circuit court that it is unclear to which entity the tax returns should be attributed. Notwithstanding, if we presume the returns to be properly those of the LLC, the presence of the depreciation deduction may work toward rebutting the presumption that the titleholder is the legal owner, but it is not, by itself, dispositive of ownership.

Appellants rely on cases in which the presumption of ownership of a vehicle was rebutted by evidence relating to who maintained and exercised control, use, and possession of the vehicle. *See, e.g.*, *Liberty Mut. Ins. Co.*, *supra*, 220 Md. at 499 (holding that father, who purchased vehicle for son and held title to it, was not the owner because evidence established that the son alone took care of the maintenance and operated the vehicle). Here, there was no evidence that the General Partnership ever lost possession, access, or the right to control the vehicle. The circuit court found that the van was stored in the same location outside Charles McGuire's garage, that no new keys were ever made, and that the keys were left overnight inside the garage at all times from 2004 to the date of the accident.

We cannot find clear error where there is competent and material evidence in the record to support the court's findings. We therefore affirm the court's decision, and remand with instructions to enter, in a separate order, an appropriate declaratory judgment.

JUDGMENT OF THE CIRCUIT COURT FOR CARROLL COUNTY VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS AS NECESSARY AND FOR ENTRY OF A

DECLARATORY JUDGMENT IN CONFORMANCE WITH THIS OPINION.

COSTS TO BE PAID BY APPELLANTS.