Circuit Court for Charles County
Case No.: C-08-CV-20-000406

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 172

September Term, 2021

ERNEST ELSBERRY, ET AL.

v.

STANLEY MARTIN COMPANIES, LLC

Beachley,
Shaw Geter,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Zarnoch, J.

Filed: January 10, 2022

Ernest and Maryann Elsberry (the "Elsberrys") appeal the decision of the Circuit Court for Charles County granting Stanley Martin Companies, LLC's ("Stanley Martin") motion to dismiss their complaint. On appeal, the Elsberrys present one question for our review:

> Whether the Maryland General Assembly limited the consumer protections in RP § 14-117(a)(3)(ii) to only include residential real property located in Prince George's County, Maryland?

For the reasons set forth below, we shall affirm the judgment.

BACKGROUND

In this appeal, the parties ask this Court to determine whether Md. Code Ann., Real Property ("RP") § 14-117(a)(3)(ii) applies to the Elsberrys' property located outside of Prince George's County.[1] In April of 2019, the parties entered into an agreement for construction of a new home in Charles County, Maryland (the "Property"). The Property is subject to a Declaration of Deferred Water and Sewer Charges made by Stanley Martin[2] and recorded among the Charles County land records at Liber 9946, Folio 89 (the

[1] Subparagraph (ii) is part of paragraph (3), which begins in subparagraph (i) with: "In Prince George's County…." RP § 14-117(a)(3)(i). Subparagraph (ii) states:

> A person or entity establishing water and sewer costs for the initial sale of residential real property may not amortize costs that are passed on to a purchaser by imposing a deferred water and sewer charge for a period longer than 20 years after the date of the initial sale.

RP § 14-117(a)(3)(ii) .

[2] In the Property's purchase agreement, SM Hamilton, LLC is identified as the "seller" and Stanley Martin Companies, LLC is identified as the "builder[.]" These entities merged after the Elsberrys purchased the Property. Both entities will be referred to as Stanley Martin herein.

"Declaration"). The Declaration requires lot owners to pay Stanley Martin annual installments in the amount of $550.00 over the course of "**thirty (30) years"** to "reimburs[e] [Stanley Martin] and/or its affiliates for the costs related to constructing and installing the Water and Sewer Systems serving the Lots[.]" (Emphasis added.) In May of 2019, Stanley Martin conveyed the Property to the Elsberrys, and the Elsberrys thereafter made a prorated initial payment pursuant to the Declaration.

In September of 2020, the Elsberrys filed suit alleging that Stanley Martin "violated RP § 14-117(a)(3)(ii) by imposing a deferred water and sewer charge for a period longer than 20 years after the date of the initial sale[.]" Stanley Martin filed a motion to dismiss the Elsberrys' complaint. The circuit court held a hearing on this motion, and concluded the following:

> In reviewing this bill, and looking that it applies to Prince George's County in the title and in the purpose of the bill, it is hard to see how any legislator reviewing this would automatically assume that it applies to all counties.
>
> Therefore, I believe the legislative history supports the interpretation of the Court here, based upon its plain reading of the statute, that [§ 14-117(a)(3)(ii)] is directly related to [§ 14-117(a)(3)(i)], and relates to Prince George's County.

The circuit court granted Stanley Martin's motion. The Elsberrys appeal that ruling.[3]

[3] Although the Elsberrys' complaint contained three additional counts that were dismissed – unjust enrichment, violation of Maryland's Consumer Protection Act (Md. Code Ann., Commercial Law, § 13-101, *et. seq.*), and breach of contract – the Elsberrys do not appeal the dismissal of those claims.

STANDARD OF REVIEW

This Court reviews circuit court interpretations of statutory provisions *de novo*. *Town of Oxford v. Koste*, 204 Md. App. 578, 585 (2012), *aff'd*, 431 Md. 14 (2013). "In statutory construction, three factors predominate: 1) statutory text; 2) statutory purpose; and 3) consequences of different statutory interpretations." *Manger v. Fraternal Ord. of Police, Montgomery Cnty. Lodge 35, Inc*., 227 Md. App. 141, 147 (2016). The statutory text "is the plain language of the relevant provision, typically given its ordinary meaning, viewed in context, considered in light of the whole statute, and generally evaluated for ambiguity." *Id*. (quotation marks and citation omitted). Moreover, "[l]egislative purpose, either apparent from the text or gathered from external sources, often informs, if not controls, our reading of the statute." *Town of Oxford*, 204 Md. App. at 586. Lastly, consideration of "interpretive consequences, either as a comparison of the results of each proffered construction, or as a principle of avoidance of an absurd or unreasonable reading, grounds the court's interpretation in reality." *Manger*, 227 Md. App. at 147 (quotation marks and citation omitted).

DISCUSSION

The Elsberrys contend that the circuit court erred in dismissing their complaint because RP § 14-117(a)(3)(ii) unambiguously applies to "residential real property located in all counties" in Maryland. They assert that "the plain language of RP § 14-117(a)(3)(ii) contains no language limiting its application to Prince George's County" and thus "cannot be read together with RP § 14-117(a)(3)(i)[.]"

Stanley Martin responds that, because "RP § 14-117(a)(3) mentions one, and only one, geographic region" and because both subparagraphs therein apply to the same subject matter, "RP § 14-117(a)(3) applies in its entirety only to Prince George's County." It asserts that because the Elsberrys' Property is in Charles County, their complaint was properly dismissed.

When reviewing statutory construction, our analysis starts "with the plain language of the statute, and ordinary, popular understanding of the English language dictates interpretation of its terminology." *Johnson v. State*, 467 Md. 362, 372 (2020) (citation omitted). The "plain language 'must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim or policy of the Legislature in enacting the statute.'" *Id*. (citation omitted). However, we '"do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone."' *Id.* (citation omitted).

The Court of Appeals stated in *Lockshin v. Semsker*, "[w]here the words of a statute are ambiguous and subject to more than one reasonable interpretation, or where the words are clear and unambiguous when viewed in isolation, but become ambiguous when read as part of a larger statutory scheme, a court must resolve the ambiguity by searching for legislative intent in other indicia[.]" 412 Md. 257, 276 (2010). Even when "faced with a truly unambiguous statute, a court is neither required to consider, nor prohibited from considering, legislative history[.]" *Daughtry v. Nadel*, 248 Md. App. 594, 613 (2020) (footnote omitted); *see also Mayor & City Council of Baltimore v. Chase*, 360 Md. 121, 131 (2000) ("[E]ven when the language of a statute is free from ambiguity, 'in the interest

of completeness' we may, and sometimes do, explore the legislative history of the statute under review.") The "modern tendency" of the Court has been "to continue the analysis of the statute beyond the plain meaning to examine 'extrinsic sources of legislative intent' in order to 'check our reading of a statute's plain language[.]'" *In re S.K.*, 466 Md. 31, 50 (2019) (brackets and citations omitted).

I. Plain Language of RP § 14-117(a)(3)

We begin our analysis with a review of the plain language of RP § 14-117(a)(3):

> (3)(i) In **Prince George's County**, a contract for the initial sale of residential real property for which there are deferred private water and sewer assessments recorded by a covenant or declaration deferring costs for water and sewer improvements for which the purchaser may be liable shall contain a disclosure that includes:
>
> 1. The existence of the deferred private water and sewer assessments;
> 2. The amount of the annual assessment;
> 3. The approximate number of payments remaining on the assessment;
> 4. The amount remaining on the assessment, including interest;
> 5. The name and address of the person or entity most recently responsible for collection of the assessment;
> 6. The interest rate on the assessment;
> 7. The estimated payoff amount of the assessment; and
> 8. A statement that payoff of the assessment is allowed without prepayment penalty.
>
> (ii) A person or entity establishing water and sewer costs for the initial sale of residential real property may not amortize costs that are passed on to a purchaser by imposing a deferred water and sewer charge for **a period longer than 20 years** after the date of the initial sale.

(Emphasis added.)

The only subparagraphs under RP § 14-117(a)(3) are (i) and (ii). Both subparagraphs relate to the same subject matter – deferred water and sewer costs associated with the initial sale of residential real property. As evident by its plain language, subparagraph (i) applies only to Prince George's County. Subparagraph (ii)'s geographical reach, however, is less obvious. Subparagraph (ii), unlike subparagraph (i), does not mention Prince George's County. It is, however, placed within a paragraph that otherwise relates only to Prince George's County – a construction not otherwise used in RP § 14-117.[4]

The Elsberrys maintain that this Court "need not even consider the legislative history given the lack of ambiguity in the statute." We disagree. Even if RP § 14-117(a)(3) is not ambiguous, as previously stated, we "do no not read statutory language in a vacuum[.]" *Johnson*, 467 Md. at 372. If RP § 14-117(a)(3)(ii) applies to all counties in Maryland, as asserted by the Elsberrys, its placement in a subparagraph within a paragraph relating only to Prince George's County is rather curious. We therefore turn to the statute's history to determine the legislature's intent. *See Maddox v. State*, 249 Md. App. 441, 452 (2021) ("When the words of a statute are ambiguous and subject to more than one

[4] As currently drafted, RP § 14-117 contains fourteen subsections. *See* RP §§ 14-117(a)-(n). Some subsections, such as RP § 14-117(c), do not identify a specific county to which they apply. *See* RP § 14-117(c) ("(1) A contract for use in the sale of residential property used as a dwelling place for one or two single-family units shall contain…."). Other subsections set out specific counties to which they apply in the very first paragraph. *See* RP § 14-117(g)(1) ("This subsection applies to Prince George's County."); s*ee also* RP §§ 14-117(h), (i), (k), and (l). No other subsection in RP § 14-117 contains a subparagraph with an arguably undefined geographical application immediately following a subparagraph limited to only one county.

reasonable interpretation ... a court must resolve the ambiguity by searching for legislative intent in other indicia.")

II. Legislative History of RP § 14-117(a)(3)

When reviewing statutory history, we "examine extrinsic sources of legislative intent[.]" *Harrod v. State*, 423 Md. 24, 33 (2011) (quotation marks and citation omitted). This includes, but is not limited to, "the context of the bill, including the title and function paragraphs, the amendments to the legislation, as well as the as the bill request form[.]" *Blackstone v. Sharma*, 461 Md. 87, 114 (2018) (quotation marks and citation omitted). It is "well-settled" that "the title of an act is relevant to ascertainment of its intent and purpose[.]" *Mass Transit Admin. v. Baltimore Cnty. Revenue Auth.*, 267 Md. 687, 695-96 (1973) (citation omitted).

Here, the legislative history indicates no intention for RP § 14-117(a)(3)(ii) to apply outside of Prince George's County. RP § 14-117(a)(3) was enacted in May of 2014 as Chapter 441. *See* 2014 Maryland Laws Ch. 441 (H.B.1043).[5] It was introduced to the General Assembly as House Bill 1043 ("HB1043") and titled "Prince George's County – Deferred Water and Sewer Charges Homeowner Disclosure Act of 2014[.]" The bill was sponsored only by the Prince George's County Delegation.

[5] Chapter 441 repealed and reenacted with amendments RP §§ 14-117(b) and (c), and added RP § 14-117.1. *See* 2014 Maryland Laws Ch. 441 (H.B.1043). RP §§ 14-117(b)(3)(i) and (ii) was new language added at that time. In 2015, RP § 14-117 was renumbered, and RP § 14-117(b)(3)(i) and (ii) became RP § 14-117(a)(3)(i) and (ii), respectively. *See* Maryland Laws Ch. 428 (H.B. 511).

Moreover, looking at HB1043's purpose paragraph, we see that it "generally relat[es] to deferred water and sewer charges in Prince George's County[,]" and that it mentions no counties other than Prince George's:

> FOR the purpose of requiring a registered home builder in Prince George's County to include certain information relating to deferred water and sewer charges in certain sales contracts under certain circumstances; requiring a certain contract for the initial sale of residential real property in the county to include certain information relating to deferred water and sewer charges; prohibiting a person or entity establishing certain water and sewer costs for the initial sale of residential real property from amortizing certain costs for more than a certain period of time; authorizing the purchaser to recover certain damages or take certain actions under certain circumstances; applying certain provisions of law to existing single family residential property in Prince George's County; requiring a certain person that imposes a deferred water and sewer charge to provide the property owner with a bill including certain information; authorizing the balance owed on a deferred water and sewer assessment to be redeemed for a certain amount; requiring the county to study certain issues relating to deferred water and sewer charges and report its findings to the Prince George's County Senators and the House Delegation on or before certain dates; authorizing the county, in completing the studies required under this Act, to consult with certain water and sewer companies; and generally relating to deferred water and sewer charges in Prince George's County.

This Court recently reviewed the legislative history of RP § 14-117(a)(3) in *Sullivan v. Caruso Builder Belle Oak, LLC*, 251 Md. App. 304 (2021).[6] There, we explained that prior to the enactment of RP § 14-117(a)(3), the General Assembly had created a "Task Force" to study concerns regarding deferred water and sewer charges by private entities.

[6] Although the issue before this Court in *Sullivan* dealt with the disclosure requirements under RP § 14-117(a)(3)(i), both RP §§ 14-117(a)(3)(i) and (ii) were enacted together in Chapter 441. *See* note 4, *supra*. Accordingly, the legislative history discussed in *Sullivan* relates to RP § 14-117(a)(3)(ii) as well.

Id. at 327-28. We noted that the Task Force was established "in response to growing concerns from policymakers regarding deferred water and sewer connection fees assessed on new homeowners by private developers." *Id*. at 328. We explained that "[t]he Task Force Report, issued in December 2013, sheds light on the transparency issues regarding deferred water and sewer assessments charged by private developers." *Id*. Specifically, we noted:

> According to the Task Force Report, the General Assembly established the Washington Suburban Sanitary Commission ("WSSC") in 1918 to address concerns that "waste from both Montgomery and Prince George's counties was contaminating streams within the [District of Columbia]." *Id*. at 1. The WSSC was responsible for the construction of new water and sewer lines in its territory and then would "impose an annual front foot benefit charge on owners of new residential, commercial, or industrial development to recover the costs" of construction. *Id*. at 21. After the enactment of legislation in 1998, however, the WSSC no longer imposes or collects front foot benefit charges. *Id*. Instead, private developers now impose and collect these charges. *Id*.

Id. at 328-29 (footnote omitted). In light of findings related to charges imposed by private developers, the Task Force submitted a report containing 13 recommendations to the General Assembly (the "Task Force Report"). *Id*. at 330.

Relevant to this appeal was the Task Force's ninth recommendation, which related to deferred water and sewer costs in Prince George's County:

> Recommendation 9: Prohibit a person from amortizing for more than 20 years from the date of the initial sale the deferred water and sewer costs that are passed onto a purchaser. (Single-family residential property in Prince George's County improved by four or fewer single-family units).

Less than three months after the Task Force Report was issued, HB1043 was introduced to the General Assembly. Further, as in *Sullivan*, where we stated that the provision at issue in that case – RP § 14-117(a)(3)(i) – was enacted "almost verbatim" after the Task Force's Recommendation 7, here, we note that RP § 14-117(a)(3)(ii) is nearly identical to the Task Force's Recommendation 9. *Sullivan*, 251 Md. App. at 331.

In support of their position, the Elsberrys point to the fact that the language in RP § 14-117(a)(3)(ii) originated in RP § 14-117.1. They assert that the legislature's decision to move it from RP § 14-117.1 to RP § 14-117(a)(3)(ii) demonstrates intent for RP § 14-117(a)(3)(ii) to apply beyond Prince George's County:

> Why would the General Assembly remove the language from § 14-117.1 (which is limited to only Prince George's County) and place it in § 14-117 (which is only limited where specifically indicated) without making any substantive changes? The reason is clear: Because the General Assembly did not intend for the 20-Year Provision to apply only in Prince George's County, unlike RP § 14-117(a)(3)(i) and § 14-117.1, which the General Assembly ***did intend*** to apply only in Prince George's County.

(Emphasis in original.) [7]

[7] The Elsberrys also assert that subsections RP §§ 14-117(g), (h), (i), (k), and (l) indicate that RP § 14-117(a)(3)(ii) applies to all counties in Maryland. Specifically, they contend that the inclusion of a specific geographic location in those subsections, and not in RP § 14-117(a)(3)(ii), indicates the legislature's intention not to so limit RP § 14-117(a)(3)(ii). *See* RP §§ 14-117(g)(1), (h)(1), (i)(1), (k)(1), and (l)(1). While we agree that those subsections add to the ambiguity of RP § 14-117(a)(3)(ii), we are not persuaded that they indicate legislative intent for RP § 14-117(a)(3)(ii) to apply beyond Prince George's County. None of those subsections were enacted with HB1043. *See* 14-117(g) (enacted in 1990 Maryland Laws, Ch. 596); 14-117(h) (enacted in 1993 Maryland Laws, Ch. 324); 14-117(i) (enacted in 2000 Maryland Laws Ch. 522); 14-117(k) (enacted in 2006 Maryland Laws, Ch. 568); 14-117(l) (enacted in 2007 Maryland Laws, Ch. 550). As the Court of Appeals has previously observed, a bill's "relationship to earlier and subsequent (continued…)

We are not persuaded that RP § 14-117(a)(3)(ii)'s placement in its current location was meant to broaden its geographical reach. As an initial matter, both RP § 14-117.1 and RP § 14-117(a)(3)(i) apply only to Prince George's County. Moreover, what the Elsberrys fail to acknowledge is that RP § 14-117(a)(3)(ii) applies to the "initial sale" of property, whereas RP § 14-117.1 applies only to "existing" property. *See* Md. Code Ann., RP § 14-117.1(a) ("This section applies only to existing single-family residential real property in Prince George's County."). Thus, placing RP § 14-117(a)(3)(ii) in a paragraph with RP § 14-117(a)(3)(i), a provision that also only applies to initial sales of property in Prince George's County, would have been entirely consistent with the Task Force's recommendations. *See* Task Force to Study Rates & Charges in the Wash. Suburban Sanitary Dist., (2013) (prohibiting "a person from amortizing for more than 20 years from the date of the *initial sale*[.]") (emphasis added).

Lastly, the Elsberrys do not dispute that the language of RP § 14-117(a)(3)(ii) as originally proposed related only to Prince George's County. Instead, they assert that this "does not mean that the General Assembly could *only* enact consumer protection laws on behalf of Prince George's County and/or Montgomery County home purchasers." While the Elsberrys are correct that the General Assembly was permitted to legislate beyond

legislation … becomes the context within which we read the particular language before us in a given case." *Kaczorowski v. Mayor & City Council of Baltimore*, 309 Md. 505, 515 (1987). As stated in its purpose paragraph, HB1043's relationship to the earlier enacted provisions of RP § 14-117 is one which relates to "deferred water and sewer charges in Prince George's County." There is no indication in RP §§ 14-117(g), (h), (i), (k), (l), or in the bill file of HB1043 itself, that HB1043 was intended to apply to any county other than Prince George's.

Prince George's County, we cannot find a legislative intent that simply does not exist. "The goal of statutory construction is to discern and carry out the intent of the Legislature." *Blue v. Prince George's Cnty.*, 434 Md. 681, 689 (2013). Given the legislative history, including "the context of the bill, . . . the title and function paragraphs, [and] the amendments to the legislation," we are not persuaded that the legislature intended for RP § 14-117(a)(3)(ii) to apply beyond Prince George's County. *Blackstone*, 461 Md. at 114.

III. Consideration of Alternative Meanings

This Court will avoid reading a statute in a way that leads to absurd or unreasonable results. *Manger*, 227 Md. App. at 147; *Mayor & Council of Rockville v. Rylyns Enters., Inc.*, 372 Md. 514, 550 (2002). In so doing, we "consider the consequences resulting from one meaning rather than another" to inform our analysis. *Maddox*, 249 Md. App. at 459 (quotation marks and citation omitted). Lastly, "we must always be cognizant of the fundamental principle that statutory construction is approached from a 'commonsensical' perspective." *Frost v. State*, 336 Md. 125, 137 (1994) (citation omitted).

The Elsberrys fail to acknowledge that their reading of the statute, if accepted, would render the title of HB1043 – "Prince George's County – Deferred Water and Sewer Charges Homeowner Disclosure Act of 2014" – unconstitutionally misleading in violation of Article III, Section 29 of the Maryland Constitution. *See* Md. Const. art. III, § 29 ("[E]very Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title[.]"); *see also Cnty. Comm'rs of Somerset Cnty. v. Pocomoke Bridge Co.*, 109 Md. 1, 7 (1908) ("A title to an Act should not only fairly indicate the general subject of the Act, but should be sufficiently comprehensive in its scope to cover,

to a reasonable extent, all its provisions and must not be misleading by what it says or omits to say.")

The Court of Appeals has previously explained that the constitutional prohibition against misleadingly titling bills serves multiple purposes:

> As the bills introduced in the Legislature are usually read by their titles only, and only the titles are printed in the Senate and House Journals, the value of this constitutional requirement is recognized in accomplishing three objects: (1) to prevent hodgepodge or log-rolling legislation; (2) to prevent surprise or fraud upon members of the Legislature by giving notice of provisions in bills which might otherwise be overlooked and carelessly and unintentionally adopted; and (3) to apprise the citizens of the State of the subjects of legislation which are being considered[.]

Pressman v. State Tax Comm'n, 204 Md. 78, 91-92 (1954).

Here, the title of HB1043 lists only one county – Prince George's County – which is followed by a dash and a short description of the bill's purpose. The Elsberrys' position that RP § 14-117(a)(3)(ii) applies to all counties in Maryland assumes that the legislature misleadingly titled a bill narrower than actually compassed. *See Painter v. Mattfeldt*, 119 Md. 466, 474 (1913) ("[T]hough the title need not contain an abstract of the bill, nor give in detail the provisions of the Act, it must not be misleading by apparently limiting the enactment to a much narrower scope than the body of the Act is made to compass.") (emphasis, quotations marks, and citation omitted). We are not persuaded that the legislature so intended. We therefore decline to accept a reading of RP § 14-117(a)(3)(ii) that would simultaneously deem it invalid. *Eubanks v. First Mount Vernon Indus. Loan Ass'n, Inc.*, 125 Md. App. 642, 669 (1999) ("Statutes are presumed valid, and a statute will

not be invalidated for defective titling unless 'it plainly contravenes a provision of the constitution[.]'") (citation omitted).

Considering the consequences of alternative readings, the statute's legislative history, and the statutory text as a whole, we note that the emphasis in RP § 14-117(a)(3)(ii) is on creating a prohibition applicable to Prince George's County – not one that applies statewide. The judgment of the circuit court is affirmed.

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