

Circuit Court for Charles County
Case No. C-08-CV-22-000222

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 266

September Term, 2023

THE MARYLAND PAROLE COMMISSION,
ET AL.

v.

SHENNA FOSTER, ET AL.

Berger,
Nazarian,
Ripken,

JJ.

Opinion by Berger, J.

Filed: October 7, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

This appeal and cross-appeal arise from an order of the Circuit Court for Charles County invalidating a regulation adopted by the Department of Public Safety and Correctional Services (“the Department”) and the Maryland Parole Commission (“the Commission”) in September 2021. The challenged regulation provides that, when determining whether an inmate is “suitable for release on parole,” the Commission shall examine, among other factors, “[t]he circumstances surrounding the crime, which diminish in significance as a consideration after the initial parole hearing[.]” COMAR 12.08.01.18A(5)(1) (“the Regulation”). Shenna Foster, Roberta Roper, and Benjamin Brown are registered crime victims’ representatives who challenged the validity of the Regulation by filing a petition for declaratory relief in circuit court against the Commission and the Secretary of the Department.

On August 10, 2022, the Commission and Department (“Appellants”) filed a motion to dismiss or, in the alternative, for summary judgment. Foster, Roper, and Brown also filed a cross-motion for summary judgment. The circuit court ultimately granted, in part, Appellants’ motion to dismiss as to Benjamin Brown, concluding that Brown lacked standing to challenge the validity of the Regulation because his claims were not ripe. The court also granted, in part, Foster and Roper’s cross-motion for summary judgment and declared the Regulation invalid, concluding that the Commission exceeded its delegated legislative authority by promulgating the Regulation.

Appellants and cross-appellants (“Foster and Roper”) each present two issues on appeal, which we consolidate and rephrase as follows:¹

- I. Whether Brown lacked standing to bring his claims against Appellants.
- II. Whether the circuit court’s order invalidating the Regulation exceeded the court’s authority under the Maryland Uniform Declaratory Judgments Act.
- III. Whether the Regulation is invalid because it was improperly promulgated.
- IV. Whether the Regulation is invalid because it contravenes the provisions of Section 7-305 of the Correctional Services Article of the Maryland Code.

The parties dispute the circuit court’s ruling on the merits, but a threshold issue was overlooked by all of the parties and the circuit court except the Maryland Office of the

¹ Appellants’ original questions presented read as follows:

1. Is the Regulation valid, where it guides the manner in which the Commission considers the statutorily enumerated factors in exercising its exclusive authority under state law to grant parole?
2. Did the circuit court lack authority to determine the validity of the Regulation as a general matter where § 10-125 of the State Government Article, which authorizes such relief, did not apply?

Foster and Roper’s brief presents the following issues on cross-appeal:

1. Whether the regulation at issue was properly promulgated.
2. Whether all three crime victims’ representatives had standing to challenge the regulation.

Public Defender (“MOPD”). In its *amicus* brief, the Maryland Office of the Public Defender urges this Court to consider -- for the first time in this proceeding -- whether the circuit court erred in failing to require Foster, Roper, and Brown to name the defendants in the underlying criminal cases -- Daren Miller, Michael Moore, Darryl Freeman, and Jerry Lee Beatty (collectively the “Potential Parolees”) -- as necessary parties.

For the reasons explained herein, we vacate the judgment of the Circuit Court for Charles County and remand with instructions to join the Potential Parolees as respondents before any further consideration on the merits.

DISCUSSION

I.

To understand why the Potential Parolees are necessary parties in this case, we initially address what makes this case justiciable in the first place. The appellees -- Shenna Foster, Roberta Roper, and Benjamin Brown -- are crime victim representatives who sought a declaratory judgment from the circuit court that the Regulation, which requires that “[t]he circumstances surrounding the crime . . . diminish in significance as a consideration after the initial parole hearing,” COMAR 12.08.01.18.A(5)(I), is invalid. The circuit court determined that the appellees’ standing to bring such an action depended upon the Potential Parolees’ eligibility for parole.

Critically, the appellees have standing *only* by virtue of the Potential Parolees’ parole eligibility status. In asserting their standing in this action, the appellees focused on the impact that the circuit court’s declaration will have on their right to be heard in parole

hearings -- a right that remains intact regardless of the judgment in this case -- and their interest in the Commissioners considering their statements as victims when deciding whether to grant parole. The MOPD, in their *amicus* brief, brought to our attention the effect that the outcome of this case will have on the Potential Parolees' interest in a parole process that focuses more on "dynamic" factors that emphasize their rehabilitation rather than "static" factors that highlight things they cannot change.

Notably, if the appellees can base their standing on an *indirect* interest in how much weight the Commissioners give to the circumstances of the crime in the Potential Parolees' parole hearings, the Potential Parolees must themselves have a right to be heard in this case based on their *direct* interest in the analyses undertaken in their own parole hearings. Simply put, the appellees' standing to challenge the Regulation derives directly from the interest the Potential Parolees have in their opportunities for parole. In short, we cannot reconcile a decision to allow the crime victim representatives to participate without the Potential Parolees' participation as well.

II.

The question presented by the MOPD as *amicus curiae* is whether we should vacate the circuit court's declaratory judgment for failure to join the Potential Parolees as necessary parties.² We agree with the MOPD that the Potential Parolees are necessary

² In its *amicus* brief, the MOPD phrased the Question Presented as follows:

Should this Court vacate the judgment of the circuit court because the victims' representatives failed to name the defendants in the underlying criminal cases as

parties under Maryland Rule 2-211 and Section 3-405(a)(1) – (2) of the Courts and Judicial Proceedings Article, Md. Code. We, therefore, vacate the circuit court’s judgment and remand with instructions to join the Potential Parolees as respondents.

Two provisions of Maryland law govern our necessary party analysis. Pursuant to Maryland Rule 2-211(a), a person *must* be joined as a party in an action if they are subject to service of process and “in the person’s absence”:

(1) complete relief cannot be accorded among those already parties, or

(2) disposition of the action may impair or impede the person’s ability to protect a claimed interest relating to the subject of the action or leave persons already parties subject to a substantial risk of incurring multiple or inconsistent obligations by reason of the person’s claimed interest.

Md. Rule 2-211(a)(1) – (2). The Maryland Uniform Declaratory Judgments Act (“DJA”) outlines a similar, though slightly broader, mandate regarding necessary parties to a declaratory judgment action:

(1) If declaratory relief is sought, a person who has or claims any interests which would be affected by the declaration, shall be made a party.

(2) Except in a class action, the declaration may not prejudice the rights of any person not a party to the proceeding.

CJP § 3-405(a)(1) – (2).

respondents in this declaratory judgment action and the circuit court failed to require them to do so?

The central point of the analysis -- which is the same when applying either provision despite the broader language of the DJA, *Service Transport, Inc. v. Hurricane Express, Inc.*, 185 Md. App. 25, 37 (2009) -- is whether a person has an interest in the subject or outcome of the litigation such that they must be given a chance to be heard on the matter. *Id.* at 39 (“The primary purposes of this compulsory joinder rule are to assure that a person’s rights are not adjudicated unless that person has had his ‘day in court’”); *see also Williams v. Moore*, 215 Md. 181, 185 (1957) (“[The DJA] . . . may be stated as a general rule that ordinarily, in an action for a declaratory judgment, all persons interested in the declaration are necessary parties.”).

A. The Potential Parolees Are Subject To Service Of Process.

The Potential Parolees easily satisfy the first requirement of Maryland Rule 2-211(a). They are incarcerated at correctional facilities in Maryland and indisputably are “subject to service of process” via the Maryland Department of Public Safety and Correctional Services’ (“DPSCS”) procedure for serving process on incarcerated individuals. DPSCS, *Service of Summonses for Inmates in Civil Proceedings*, DCD# 20-4 (Sept. 15, 2006), *archived at* <https://perma.cc/5MY3-MJUZ>. A process server may visit the facility in which the incarcerated individual resides and request to personally serve process on the individual. *Id.* at 2. Thereafter, institutional staff must then notify the individual and have them report to a designated area to receive the summons, though the individual may refuse and may not be forced to do so. *Id.*

B. The Potential Parolees Have An Interest In This Action Based On Their Right To An Opportunity At Parole As Measured Against The Standards Outlined In The Regulation At Issue.

The appellees are correct that victims and victim representatives have the right to attend the parole hearings of the defendant(s) who committed crimes against the victim, to speak at those hearings, and to be treated with “respect, dignity, and sensitivity” when doing so. *See* Md. Const. art. 47(a) (“A victim of crime shall be treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process.”); CS § 7-305(1), (7), (9), (10) (factors that *must* be considered during parole hearings include circumstances of the crime, updated victim impact statements, information provided to commissioner by victim, and testimony provided to Commission by victim or victim representative).³ The appellees’ interest in this action, however, is not to protect those legal procedural and substantive rights, notwithstanding their arguments to the contrary. Those rights remain untouched regardless of the outcome. Instead, their standing rests on a more remote and indirect interest in the Commissioners placing greater, or at least not being required to place lesser, weight on the circumstances of the crime in parole hearings. That interest is nonetheless strong enough to support the appellees’ standing in this case.

³ Article 47 and Section 7-305 are most relevant to the issue here, but several other Maryland laws reiterate victims’ rights, emphasize the importance of ensuring victims have the opportunity to exercise their rights in criminal justice proceedings, and provide remedies in instances in which victims are not given that opportunity. *See, e.g.*, CS § 7-304 (parole hearing must be opened to public if victim makes demand); CP § 11-1002(b)(1), (13) (victims and victim representatives “should be treated with respect, dignity, courtesy,

On the other hand, the Potential Parolees have a direct and substantial interest in the standards against which they will be judged in parole hearings and how those standards affect their prospects of getting paroled. Our courts have recognized necessary party status in individuals and entities whose actual interests were far less fundamental and substantive than the Potential Parolees’ interest in an opportunity for release on parole. *See, e.g., Berret v. Allen*, 45 Md. App. 544, 547–48 (1980) (residual beneficiaries were necessary parties in trust beneficiary’s action seeking declaration that he was remainderman of trust property where alternative interpretation of will and codicil would name residual beneficiaries as remaindermen); *Mahan v. Mahan*, 320 Md. 262, 270–73 (1990) (residual beneficiary was necessary party where circuit court’s finding that Deed of Trust did not designate a remainderman upon death of life income tenants invalidated residual beneficiary’s claim as remainderman under alternative interpretation); *Bender v. Sec’y, Md. Dep’t of Pers.*, 290 Md. 345, 352–56 (1981) (employees whose unclassified positions were contested as illegally created were necessary parties based on interests in avoiding changes to terms and conditions of their jobs); *Doe v. Alt. Med. Md., LLC*, 455 Md. 377, 410–30 (2017) (pre-approved cannabis growers were necessary parties where rejected grower sought declaratory judgment that the standards applied in Cannabis Commission’s pre-approval process did not meet statutory requirements and sought order requiring Commission to rescind pre-approvals and redo process with requested standards).

and sensitivity,” and are entitled to “speedy disposition” of a case to avoid prolonging victim’s stress and involvement in the case); CP § 11-103(e) (court must ensure the victim is afforded rights and can grant relief if the victim’s right was denied or not considered).

In our view, the Supreme Court of Maryland’s opinion in *DeWolfe v. Richmond*, 434 Md. 403 (2022) is instructive. In that case, indigent arrestees brought a declaratory judgment class action against various officers and units of the district court seeking a declaration that they were entitled to representation by the Public Defender in initial bail hearings before court commissioners. The Supreme Court held that the Office of the Public Defender was a necessary party in the case because the indigent arrestees sought a declaratory judgment that they would be entitled to representation at initial bail hearings, which would require MOPD to provide such services despite no additional funding. *Id.* at 414–18 (citing *Richmond v. Dist. Ct. of Md.*, 412 Md. 672 (2010)).

Turning back to the instant appeal, the Potential Parolees, whose parole eligibility created the basis upon which the appellees stand as parties in this case, have a substantial and undeniable interest in the subject matter and outcome in the parole process and a chance at freedom -- particularly in comparison to the monetary, property, and/or employment interests that have established individuals as necessary parties in past declaratory judgment actions -- is more than sufficient to satisfy the “claimed interest” prong of Maryland Rule 2-211 and Section 3-405 of the Courts and Judicial Proceedings Article, Maryland Code.

C. A Judgment In This Action May Impair Or Impede The Potential Parolees’ Ability To Protect Their Interests.

Finally, a final judgment in this case may impair or impede the Potential Parolees’ ability to protect their interest in a meaningful and fair parole process governed by the Regulation. *See* Maryland Rule 2-211(a)(2). If the Regulation is valid -- and the formal

practice of the Commission is to place less weight on the circumstances of the crime in subsequent parole hearings -- Commissioners may place greater focus on the factors that demonstrate who the Potential Parolees are now rather than who they were at the time of the crime.⁴ Victims and victim representatives still will be permitted to attend the hearings and provide statements, and they still must be treated with respect, dignity, and sensitivity in the process.

Alternatively, if the Regulation were deemed invalid, the Regulation's mandate to focus less on the facts of the crime as time passes would be reduced to the informal practice explained in Commissioner David Blumberg's affidavit, which other Commissioners may or may not follow. This would leave Commissioners free to deny an individual parole indefinitely solely because of the severity of the crime, without any regard for the progress, improvements, or rehabilitation of that individual. Undoubtedly, either outcome could affect the analyses in the Potential Parolees' future parole hearings and substantially affect their prospects of being paroled. In either instance, however, victims and victim representatives will be permitted to attend the hearings and provide statements, and they will still be treated with respect, dignity, and sensitivity.

The outcome of this action affects the Potential Parolees' substantive rights to a meaningful opportunity to be considered for parole based on the standards laid out in the

⁴ These factors include the defendant's "physical, mental, and moral qualifications," their progress during confinement, drug and/or alcohol reports, the likelihood that they will offend again, whether their release is "compatible with the welfare of society" at that point in time, and compliance with their case plan. CS § 7-305(2), (3), (4), (5), (6), and (11).

Regulation. We acknowledge and appreciate the position of the appellees, and their rights and interests are no less important or worthy of consideration in this case. Nonetheless, the Potential Parolees also have a stake in this action that is tied directly to their substantive rights and their interest in regaining freedom through the parole process. A judgment in this case could increase the value of the Potential Parolees' rehabilitative efforts steadily, or it could potentially increase the possibility that the Potential Parolees will never get paroled no matter how much effort they put into their rehabilitation. In short, the Potential Parolees must be given the opportunity to protect their interests in this case.

We, therefore, vacate the judgment of the Circuit Court for Charles County and remand for further proceedings consistent with this opinion.⁵

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY VACATED.
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE PAID
ONE-HALF BY APPELLANTS/CROSS-
APPELLEES AND ONE-HALF BY
APPELLEES/CROSS-APPELLANTS.**

⁵ We acknowledge there are other issues addressed by the circuit court in its Opinion and Order of the Court dated March 10, 2023 and filed on March 13, 2023. Inasmuch as we vacate that Opinion and Order on the grounds of the failure to join necessary parties, we are precluded from considering, at this time, the other issues identified in this appeal and cross-appeal.