Circuit Court for Baltimore City
Case No.: 24-C-23-002458

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1710

September Term, 2023

JUSTIN K. HOLDER

v.

MARYLAND DEPARTMENT OF THE ENVIRONMENT, ET. AL.

Leahy,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned)
JJ.

Opinion by Friedman, J.

Filed: January 27, 2025

*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 to MD. R. 1-104(a)(2)(B).

In this appeal, appellant Justin K. Holder asserts that the Circuit Court for Baltimore City erred in granting summary judgement in favor of appellee Maryland Department of the Environment and two of its employees, Amanda Redmiles and Kathy Mohan. For the reasons that follow, we affirm the judgment of the circuit court.

BACKGROUND

On March 2, 2023, Holder submitted a request under the Maryland Public Information Act (MPIA) with the Maryland Department of the Environment, asserting that "the Washington County Attorney had unambiguously admitted that the County was in violation of the mandatory requirements of [EN] § 9-503" and thus, he sought "inspection of the public record that demonstrates MDE has approved a 'county plan'…covering 'at least a 10 year period[,]'" as well as "[any]/all investigative reports, correspondence with Washington County, correspondence with Maryland Planning, or any other communications regarding the violation." MD. CODE, GENERAL PROVISIONS ARTICLE ("GP") § 4-101 *et. seq.*; *see also* MD. CODE, ENVIRONMENT ARTICLE ("EN") § 9-503 (county water and sewerage plans).

The following day, Kathy Mohan, a Public Information Act Liaison for MDE's Water & Science Administration, responded acknowledging the request:

> The Maryland Department of the Environment (MDE) received your recent request for information under the Public Information Act (PIA).
>
> Your request has been assigned the tracking number listed above. Please use this tracking number in all communications referring to this request. Your request has been reviewed and distributed to all appropriate MDE programs.
>
> In reviewing your request, we anticipate that it will take 30 calendar days or less to identify, locate, review, and produce the record(s) you seek. MDE

> receives numerous PIA requests daily and this time is necessary to sufficiently search for and collect the record(s) responsive to your request from appropriate MDE administrations and applicable field offices. MDE shall conduct its search and prepare your request with all practicable speed.

On March 21, 2023, Amanda Redmiles, MDE's Interdepartmental Information Liaison, went out on medical leave.[1] On March 27, 2023, Mohan e-mailed a findings letter to Holder:

> The Maryland Department of the Environment (MDE) received your recent request for information under the Public Information Act (PIA).
>
> The Water Science Administration has information and data available on the site(s) listed above. Please con[t]act KATHLEEN MOHAN to schedule an appointment for file review or to arrange for photocopies of all releasable materials. You will be invoiced for all applicable search, review, duplication and postage charges. It is requested that you make arrangements to review available files within 30 days of receipt of this letter. After 30 days your request will be closed and it will be necessary to file a new request.

Holder responded that day, asserting that "[he] would like to inspect, photograph and/or obtain certified copies" and asking Mohan "to provide the total number of pages of responsive records to assist [him] in determining the best course of action[.]" The next day, Mohan asked Hannah Benzion, an MDE employee with the Watershed Restoration Planning Division, if she could provide information responsive to the request by April 8, 2023. On April 7, 2023, Mohan responded to Holder stating, "I have contacted the file custodian. As soon as I hear back I will let you know."

On May 10, 2023, Holder asked Mohan the "date and time [he] may inspect the responsive records[.]" Mohan thereafter corresponded with three additional MDE

[1] According to an affidavit filed with MDE's motion for summary judgment, Redmiles remained on medical leave throughout the relevant events.

employees, including several program chiefs, attempting to locate the records without success.

Dissatisfied with the responses he'd received, on May 22, 2023, Holder filed suit against MDE asking the circuit court to, among other things, enjoin MDE from withholding the public records he had requested, issue an order for the production of the public records that he alleged were being withheld, waive all fees associated with his records request, and award him litigation costs, fees, and damages.

Meanwhile, Mohan continued her efforts to locate records responsive to the request. On May 23, Gregorio Sandi, a Watershed Restoration Planning Division chief, emailed Mohan the following:

> OK, after going into the Database, this isn't at all what thought it was originally. This is a request for communications regarding delegated authority to Washington County. The response should have been "Not Found" b/c that is stormwater program issue and not WPRPP issue.

On May 24, Mohan's supervisor, Andrew Gosden, suggested that Holder may be looking for the Washington County water and sewer plan. On May 26, 2023, Mohan e-mailed Holder and asked, "Are you looking for the Washington County water and sewer plan?" On May 30, 2023, Mohan emailed Holder again, asserting, "Please confirm that you want the triennial water and sewer plan submission." The record reflects no response from Holder to either inquiry.

On May 31, 2023, a program chief with MDE's Water Resources Planning Division, Robin Pellicano, notified Mohan by email that she wasn't sure what Holder was requesting, that they "[did] not have any written correspondence regarding a 'violation' to provide,"

but she had located "the letter for the approval of the 2009 [water and sewer] [p]lan[,]" which she attached. Mohan forwarded the document to Holder that day.

On June 30, 2023, MDE filed a motion to dismiss, or in the alternative, a motion for summary judgment, asserting that MDE had never denied Holder's request, that all responsive records had been provided, and thus, Holder's claims were moot. In support, MDE attached an affidavit in which Mohan detailed her efforts to obtain the documents and asserted that she had sent "all public records" relevant to the request on May 31. In opposition, Holder challenged the adequacy of the documents produced and asserted that MDE had willfully and knowingly violated the MPIA, entitling him to damages.

On August 9, 2023, the circuit court held a hearing on MDE's motion for summary judgment. The court noted that Mohan's emails showed that she had taken "all measures, under [her] ability, to get the records that Mr. Holder requested." The circuit court then found that MDE had complied with the request to provide Holder with whatever information it had, and that there was nothing suggesting that MDE had acted to willfully or knowingly delay or refuse Holder's request that would support an award of damages. The court granted MDE's motion for summary judgment. Holder thereafter filed a motion to alter or amend the judgment, which was denied.

STANDARD OF REVIEW

Whether the circuit court's grant of summary judgment was proper is a question of law that we review without deference. *Myers v. Kayhoe*, 391 Md. 188, 203 (2006). Summary judgment is appropriate where "there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter

of law." MD. R. 2-501(f). "To be 'genuine' in this context, the dispute must be more than hypothetical or conjectural: 'the mere existence of a scintilla of evidence in support of the [non-moving party's] claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the plaintiff.'" *Woznicki v. GEICO Gen. Ins. Co.*, 216 Md. App. 712, 725 (2014) (quoting *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 738 (1993)). In other words, to survive a motion for summary judgment, "the party opposing summary judgment 'must do more than simply show there is some metaphysical doubt as to the material facts.'" *Beatty*, 330 Md. at 738 (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

DISCUSSION

On appeal, Holder asserts that the circuit court improperly determined that his claims were moot because he was still challenging the adequacy of the documents produced and because he sought damages and litigation costs. We disagree.

"Generally, a case is moot if no controversy exists between the parties or 'when the court can no longer fashion an effective remedy.'" *D.L. v. Sheppard Pratt Health Sys., Inc.*, 465 Md. 339, 351-52 (2019) (quoting *In re Kaela C.*, 394 Md. 432, 452 (2006)). Holder asserts that MDE has not fully responded to his request because it answered that it had no additional "written correspondence" but did not state that there were no additional responsive records, leaving open the inference that there could be something else that is not strictly written. Holder's assertion is nothing more than speculation based on semantics. Such speculation does not create a factual dispute as to the existence of any additional

documents. *The Abell Found. v. Baltimore Dev. Corp.*, 262 Md. App. 657, 716 (2024) (holding that because the non-moving party failed to generate a factual dispute as to whether there were additional documents being withheld, the court did not err in granting summary judgment).

Despite his failure to create a factual dispute about the existence of additional responsive documents, Holder argues that the case is not moot because he was nonetheless entitled to damages.[2] Again, we disagree. The relevant provision of the MPIA provides that a government entity is liable for appropriate damages "if the court finds that [it] knowingly and willfully failed to: (i) disclose or fully to disclose a public record that the complainant was entitled to inspect under this title[.]" GP § 4-362(d)(1). The only evidence Holder offered to support his claim that MDE's actions were knowing and willful were

[2] Holder criticizes the circuit court for "disregarding the teachings" of *Ireland v. Shearin*, 417 Md. 401 (2010) and argues that under *Ireland*, even though he obtained the documents he sought, it was error for the circuit court to consider his case moot because he was still challenging the adequacy of MDE's response and was still entitled to damages. Holder's reliance on *Ireland* is, however, misplaced. In *Ireland*, the circuit court had dismissed a complaint under the MPIA as moot without issuing an opinion. *Id*. at 405-06. The Supreme Court of Maryland vacated the order because the record showed that the MPIA had been violated and, regardless of the fact that the documents had eventually been disclosed, the circuit court should have considered whether that violation was knowing and willful such that the complainant was entitled to an award of damages. *Id*. at 412. In contrast, here the circuit court did not dismiss the case as moot but rather granted summary judgment on the grounds that Holder had failed to create a dispute of material fact that there was any violation of the MPIA. Moreover, the circuit court *did* consider whether Holder might be entitled to damages and found that, although the court could "hear the frustration in [Holder's] voice as to [the] delay," it did "not rise to a willful and knowing delay" and there was "nothing that the [court] can make a finding or provide a remedy for in that way." Thus, the circuit court's actions here were precisely in line with the teachings of *Ireland v. Shearin*.

allegations that other MPIA requests made by other parties have been answered by MDE more expeditiously, which, he argues, shows that MDE has adopted a policy of delay to treat his requests differently. Holder also argues that the circuit court was "legally incorrect" in concluding that MDE's violation was not knowing and willful "because the clear letter of Maryland law in GP § 202 & 203 provides that [MDE's] response to [his] March 2, 2023 MPIA was due no later than April 2, 2023."

The MPIA permits an award of damages not merely for missing the statutory deadline or for failing to disclose documents, but for "knowingly and willfully" failing to disclose documents. GP § 4-362(d)(1). Although MDE concedes that their response was delayed, the record indicates that Mohan worked diligently to locate records responsive to the request and forwarded the only record within MDE's possession to Holder the same day she received it. The allegations pled by Holder—that he was "treated differently" because another request allegedly received by MDE in 2020 received a faster response—were insufficient to create a genuine dispute of material fact as to whether MDE knowingly and willfully denied his request and failed to disclose documents. Moreover, as seems obvious, some requests are more difficult—and take longer to fulfill—than others. Because there was no evidence of a knowing and willful violation, the circuit court properly denied Holder's request for damages.

Finally, Holder asserts that, "as a clear matter of Maryland law, [he] 'substantially prevailed[,]" and thus, the circuit court should have awarded litigation fees. We disagree. A party will not have "substantially prevailed" merely because the requested documents were ultimately disclosed, or even because the requested documents were disclosed after a

lawsuit was filed. Rather, to "substantially prevail" a party must demonstrate that there is a "causal nexus" between the prosecution of the lawsuit and the surrender of key documents such that "prosecution of the lawsuit could reasonably be regarded as having been necessary … to gain release of the information." *Caffrey v. Dept. of Liquor Control for Montgomery Cnty.*, 370 Md. 272, 299 (2002) (cleaned up). And even when a litigant has substantially prevailed, they become "'eligible' but not 'entitled' to an award of reasonable attorney fees and costs." *Kline v. Fuller*, 64 Md. App. 375, 385 (1985); *see also* GP § 4-362(f) ("If the court determines that the complainant has substantially prevailed, the court may assess against a defendant governmental unit reasonable counsel fees and other litigation costs that the complainant reasonably incurred.").

Here, the circuit court did not make a finding that Holder substantially prevailed. Rather, the circuit court noted that the evidence showed "consistent … movement in [the] process of [getting] … the documents and information that [Holder] wanted." We note also that the emails documenting MDE's efforts to find and disclose responsive information do not include any mention of Holder's lawsuit at all. There is no indication that Mohan was aware of or motivated by the litigation when she sent Holder the responsive documents. Because there is nothing in the record suggesting that it was necessary for Holder to initiate litigation to gain the release of the information he sought, he did not substantially prevail. Accordingly, Holder was neither entitled to, nor eligible for, litigation fees under GP § 4-362(f).

Because Holder failed to raise any genuine issue of material fact that MDE had violated the MPIA at all, much less knowingly or willingly, summary judgment was proper.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.