Circuit Court for Anne Arundel County
Case No. C-02-CV-23-000698

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1859

September Term, 2023

MARTINA EVANS

v.

VALENTINE KRAVETS

Wells, C.J.,
Beachley,
Albright,

JJ.

Opinion by Beachley, J.

Filed: December 16, 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 to Rule 1-104(a)(2)(B).

This is an appeal from a judgment, entered in the Circuit Court for Anne Arundel County, dismissing a civil complaint filed by Martina Evans, appellant, against Valentine Kravets, appellee. Evans raises a single question, which we have rephrased for clarity:

Did the circuit court err in dismissing Evans's complaint?

Finding no error, we affirm.

BACKGROUND

In 2020, Evans purchased a home in the Shipley Homestead Community in Anne Arundel County. The community is comprised of over 500 hundred homes and is governed by the Shipley Homestead Homeowners Association (the "HOA"). In January 2022, Evans was elected to serve as Treasurer of the HOA's Board of Directors (the "Board"). The Board consisted of six other members, including a President, Vice President, Secretary, and three Directors. Kravets served on the board as a Director.

First Amended Complaint

In April 2023, Evans was removed from the Board. Around that same time, Evans filed a civil complaint against Kravets in the circuit court. Shortly thereafter, Evans filed a First Amended Complaint. In that complaint, Evans alleged that Kravets, in his capacity as a Director on the Board, engaged in various tortious behaviors around the time of Evans's removal from the Board. Notably, Evans alleged: that Kravets had "threatened" and "harassed" Evans via email and at HOA meetings; that Kravets had threatened to have Evans removed from an HOA meeting; that, while making that particular threat, Kravets "began to rise up," which caused Evans "to be put in reasonable apprehension of an

imminent battery;" that Kravets had subsequently succeeded in having Evans "censured" by the Board; that Kravets read the censure at a later HOA meeting; and that Kravets, without just cause, had Evans removed from the Board. Evans thereafter requested injunctive relief, which included that HOA actions be halted and that Kravets be removed from the Board. Evans also included five separate causes of action – negligence, defamation, false light, private nuisance, and assault. For each of those causes of action, Evans sought compensatory and punitive damages in the amount of $10,000,000.00.

First Motion to Dismiss and Second Amended Complaint

In June 2023, Kravets filed a motion to dismiss the First Amended Complaint. Kravets alleged that Evans failed to state a claim for which relief could be granted.

On August 15, 2023, before the court issued a ruling on Kravets's motion to dismiss, Evans filed a Second Amended Complaint. In that complaint, Evans added seven new defendants and several new causes of action, including claims of racial discrimination in violation of federal law. Despite those changes, the operative facts that served as the basis for Evans's claims against Kravets remained essentially the same as those set forth in the First Amended Complaint.

Second Motion to Dismiss

On August 30, 2023, Kravets filed a motion to dismiss Evans's Second Amended Complaint. In that motion, Kravets argued, for the first time, that Evans's claims were barred by §§ 5-406 and 5-422 of the Courts and Judicial Proceedings Article ("CJP") of the Maryland Code and § 14-118 of the Real Property Article ("RP") of the Maryland

Code. Under CJP § 5-406, if a homeowners association has the requisite insurance coverage, an officer or director cannot be held personally liable "in any suit" unless the officer or director acts with malice or gross negligence. Md. Code, Cts. & Jud. Proc. § 5-406(b). Under CJP § 5-422 and RP § 14-118, if a person sustains an injury as a result of a tortious act of an officer or director of a homeowners association while that officer or director is acting within the scope of his or her duties, the person may recover only in an action brought against the homeowners association. Md. Code, Cts. & Jud. Proc. § 5-422(b); Md. Code, Real Prop. § 14-118(b). CJP § 5-422 also states, in relevant part, that, if such an action is brought against an officer or director, the homeowners association shall be substituted as the named defendant. Md. Code, Cts. & Jud. Proc. § 5-422(d)(3).

Dismissal of Second Amended Complaint

In October and November 2023, the circuit court dismissed Evans's claims against all parties except Kravets. Aside from the claims against one of those parties, which Evans dismissed voluntarily, the claims against the other parties were dismissed for insufficiency of service of process.

On November 20, 2023, the court held a hearing on Kravets's motion to dismiss. At that hearing, the court asked Evans to respond to Kravets's immunity claims pursuant to CJP §§ 5-406 and 5-422 and RP § 14-118. Regarding CJP § 5-406, Evans asserted that, while the HOA did have a relevant insurance policy, she was unsure whether the insurance policy was applicable in her case. As to the other statutes, Evans claimed that, even if

Kravets was immune from suit, CJP § 5-422 requires that the HOA be substituted as a party.

The court responded to Evans's arguments by noting that, if the case was dismissed against Kravets, Evans could refile against the HOA. The court noted that, alternatively, it could grant Evans leave to amend her Second Amended Complaint. The following colloquy ensued:

> THE COURT: Okay. Before I rule, I do want to address this to you, Ms. Evans, understanding that you are acting *pro se*. You are aware, I'm sure, ma'am, that many of the defendants that you named in this case prior to Mr. Kravets's case coming before the Court were dismissed for failure of service, and that was because you were required when you amended the complaint to provide all of the documents. And I say that to say I agree with [defense counsel] that it would be to your benefit to institute a new lawsuit because then you only have to file that one complaint. Whereas if you do an amendment, you are going to have to pull every docket entry from this case and serve it on the HOA. Do you understand that?
>
> MS. EVANS: I do understand that.
>
> * * *
>
> THE COURT: Okay. All right. And so, understanding – so the cases against Mr. Kravets will be dismissed because the Court's reading of the immunity statute is that he is immune from suit in his personal capacity. Ms. Evans, if – *I'm happy to allow you leave to amend if that's what you want to do, but just understand what the service requirement is*. Is that what you would prefer the Court to do?
>
> MS. EVANS: My concern is that, I mean, I certainly can have the … resident agent for the HOA served. My concern is that it just doesn't seem clear that the HOA is at fault. And understand … the statute reads if there is a problem or if there is a claim against any of the individual litigants the HOA would be the party of (unintelligible). It does not necessarily comport with what the HOA's attorney has already advised the HOA. And, moreover, it's not necessarily – it doesn't comport with the information that the HOA board has actually communicated to the entire community. So that's something

that is of concern to me. But having said that, I do appreciate the Court's information and directive or suggestion that it would be better for me because I would just have to serve the HOA. And given that even though defendant Kravets and the others … wouldn't necessarily be dismissed so to speak because it's against the HOA, and each of those who are Board members would be included. So that's my understanding – well that's, I guess, my question, is that something that can be, would it be revised because it's now not just him, it's the entire HOA Board?

THE COURT: Okay, so I can't answer that question for you 'cause I'm not permitted to give you legal advice. But, of course, you understand that now that I have dismissed the case against Mr. Kravets, the cases against all of the individual defendants have been dismissed. And so, for your amendment, you would have to sue the Board, in the name of the Board. But I think what we will do, I'm going to dismiss the case without prejudice, but not with leave to amend, and then you will have to file then a new lawsuit, which as we discussed, I think is to your benefit to proceed that way anyway.

[DEFENSE]: Thank you, Your Honor.

MS. EVANS: Oh, is it your understanding, or is it your understanding, Your Honor, that filing the new case would be against the HOA Board and the entire, all of the other allegations would be sufficient, or I can keep those allegations or retain those allegations in the complaint as long as the HOA Board is a defendant?

THE COURT: So, here's the thing ma'am, again, I can't give you legal advice. So it is my suggestion that if this isn't an area of law where – I understand that you're an attorney, but if this isn't an area of law where you practice, it's my suggestion that you go and speak to an attorney who practices in this area.

MS. EVANS: Yes, however, the dismissal without prejudice would be for a period of, is it 30 days, or do you know how long it would be before I am able to re-file and sue the HOA?

THE COURT: So, again, I can't give you legal advice. But there is, as far as I know now, time (unintelligible), so –

MS. EVANS: But it is without prejudice? That's what I –

THE COURT: Right, the dismissal is without prejudice.

MS. EVANS: Okay, okay. Thank you, Your Honor.

(Emphasis added).

The hearing concluded. The court thereafter entered an order dismissing Evans's Second Amended Complaint without prejudice and without leave to amend. This timely appeal followed. Additional facts will be supplied to inform our analysis.

DISCUSSION

Parties' Contentions

Evans contends that the circuit court erred in dismissing her Second Amended Complaint. Evans argues that the court "failed to rule in accordance with the statutes upon which it relied" and "provided no legal basis" for dismissing the complaint. Evans also argues that Kravets's motion to dismiss was untimely because it was not filed until after the deadline for the amendment of pleadings set forth in the court's scheduling order. Finally, Evans claims that the court erred in not allowing her to amend the complaint to substitute the HOA as the named defendant, as required by CJP § 5-422. Evans argues that it was "illogical" and "prejudicial" for the court to dismiss the complaint and force her to file a new action against the HOA.

Kravets argues that the circuit court's decision was legally correct and in accordance with the applicable statutory provisions. Kravets asserts that his motion to dismiss was timely and that Evans was not prejudiced by the court's decision. Kravets insists that substitution was not mandatory and that dismissal was an appropriate remedy.

Standard of Review

When reviewing the grant of a motion to dismiss, we apply a *de novo* standard of review to determine whether the court was legally correct. *D.L. v. Sheppard Pratt Health System, Inc.*, 465 Md. 339, 350 (2019). In making that determination, we "assume the truth of factual allegations made in the complaint and draw all reasonable inferences from those allegations in favor of the plaintiff." *Ceccone v. Carroll Home Services, LLC*, 454 Md. 680, 691 (2017). "[G]enerally, dismissal is proper if the alleged facts and permissible inferences, viewed in a light most favorable to the non-moving party . . . would, if proven, nonetheless fail to afford relief to the plaintiff." *Sanders v. Board of Education of Harford County*, 477 Md. 1, 15 (2021) (citations and quotations omitted).

Because this case involves interpretation of Maryland statutes, we also set forth the well-settled rules of statutory construction. "The paramount object of statutory construction is the ascertainment and effectuation of the real intention of the Legislature." *Andrews & Lawrence Professional Services, LLC v. Mills*, 467 Md. 126, 149 (2020) (citations and quotations omitted). "The starting point of any statutory analysis is the plain language of the statute, viewed in the context of the statutory scheme to which it belongs." *Kranz v. State*, 459 Md. 456, 474 (2018) (citations and quotations omitted). "If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction." *Noble v. State*, 238 Md. App. 153, 161 (2018) (citing *Espina v. Jackson*, 442 Md. 311, 321-22 (2015)). If, on the other hand,

words of a statute are ambiguous, "a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process." *Id.* at 162 (citation omitted).

Analysis

The statutes at issue in the instant case are RP § 14-118 and CJP § 5-422.[1] The first statute, RP § 14-118, reads:

Governing body defined

> (a)(1) In this section, "governing body" means a person who has the authority to enforce:
>
> > (i) The provisions of a declaration, as defined under § 11-103 of the Maryland Condominium Act;
> >
> > (ii) Articles of incorporation of a council of unit owners, of a cooperative housing corporation as defined under the Maryland Cooperative Housing Corporation Act, or of a homeowners association, as defined under the Maryland Homeowners Association Act; or
> >
> > (iii) The provisions of bylaws, rules, and regulations of a condominium, as defined under the Maryland Condominium Act, of a cooperative housing corporation as defined under the Maryland Cooperative Housing Corporation Act, or of a homeowners association, as defined under the Maryland Homeowners Association Act.
>
> (2) "Governing body" includes:

[1] As he did below, Kravets also relies on CJP § 5-406, which provides general immunity for a homeowners association's officers or directors if the association has an insurance policy that meets the requirements of the statute. Although it does appear from the record that the HOA had an insurance policy, it is not clear whether that policy met the requirements of the statute. We are therefore unable to determine whether CJP § 5-406 is applicable here.

(i) A homeowners association, as defined under the Maryland Homeowners Association Act;

(ii) A council of unit owners of a condominium, as described in the Maryland Condominium Act; or

(iii) A cooperative housing corporation.

Actions brought against governing body for tortious acts of officers or directors

(b) A person sustaining an injury as a result of the tortious act of an officer or director of a governing body while the officer or director is acting within the scope of the officer's or director's duties may recover only in an action brought against the governing body for the damages described under § 5-422(b) of the Courts and Judicial Proceedings Article.

Immunity of director or officer of governing body

(c) In a proceeding against a governing body, a director or officer of a governing body shall have the immunity from liability described under § 5-422(c) of the Courts and Judicial Proceedings Article.

Md. Code, Real Prop. § 14-118 (internal footnote omitted).

The second statute, CJP § 5-422, reads:

Governing body defined in Real Property Article

(a) In this section, "governing body" has the meaning stated in § 14-118 of the Real Property Article.

Recovery of actual damages

(b) Subject to the provisions of subsection (c) of this section, a person sustaining an injury as a result of the tortious act of an officer or director of a governing body while the officer or director is acting within the scope of the officer's or director's duties may recover only in an action brought against the governing body for the actual damages sustained.

Immunity of director or officer of governing body

(c) In a proceeding against a governing body, a director or officer of a governing body may not be held personally liable for injuries sustained by a party if the director or officer:

(1) Acted within the scope of the director's or officer's duties;

(2) Acted in good faith; and

(3) Did not act in a reckless, wanton, or grossly negligent manner.

Defendants named in suit

(d)(1) Except as provided in paragraph (2) of this subsection, a claimant shall name only the governing body as a party defendant.

(2) An officer or director of a governing body may be named individually only when the governing body for which the officer or director was acting cannot be determined at the time an action is instituted under this section.

(3) If an officer or director is named as an individual defendant under this section, the governing body for which the officer or director was acting shall be substituted as the party defendant when its identity reasonably can be determined.

Md. Code, Cts. & Jud. Proc. § 5-422.

We begin with Evans's concession in her opening brief that "[n]otwithstanding the Appellee's assault against Appellant, she concedes that [Kravets] was acting within the scope of his duties as Board president as argued by Appellee's counsel[.]" In light of that concession, the plain language of the statutes required Evans to name the HOA as the sole party defendant in her second amended complaint. The applicable statutes unambiguously state that, if a person sustains an injury "as a result of the tortious act of an officer or director of a governing body while the officer or director is acting within the scope of the officer's

or director's duties," then that person "may recover *only* in an action brought against the governing body." Md. Code, Real Prop. § 14-118(b) (emphasis added); Md. Code, Cts. & Jud. Proc. § 5-422(b) (emphasis added). CJP § 5-422 further provides, in no uncertain terms, that, if the identity of the governing body can be determined at the time the action is instituted, then "a claimant shall name *only* the governing body as a party defendant." Md. Code, Cts. & Jud. Proc. § 5-422(d) (emphasis added). Here, the HOA was undoubtedly a "governing body" within the contemplation of the statutes. Moreover, the identity of the HOA was known to Evans at the time she first instituted the action against Kravets (indeed, Evans had been a board member of the HOA). Under these circumstances, Evans was required to bring her action solely against the HOA.

Consistent with her acknowledgement that Kravets was acting within the scope of his duties, Evans does not appear to dispute that RP § 11-118 and CJP § 5-422 apply in this case. In fact, throughout her opening brief Evans asserts that the HOA should have been substituted in place of Kravets. In her reply brief, Evans confirms that the "crux of [her] argument rests on the [circuit court] failing to substitute the HOA for [Kravets]."[2] Evans further argues that the court failed to provide an appropriate legal basis for its decision and that Kravets's motion to dismiss was untimely.

We are not persuaded by any of Evans's arguments. First, Evans's claim that the

[2] To be sure, in her reply brief, Evans suggests that her claims of assault and defamation are "personal and beyond the HOA's purview." We note that this statement is embedded within her argument that the court erred by failing to substitute the HOA for Kravets. Indeed, as in her opening brief, the thrust of Evans's argument in her reply brief is that "[s]ubstitution was the only proper remedy[.]"

court failed to provide a basis for its decision is not supported by the record. The court made clear that its decision to dismiss was based on Evans's failure to comply with RP § 11-118 and CJP § 5-422. That finding was, as noted, legally correct.

Regarding the timeliness of Kravets's motion to dismiss, we see nothing in the record to suggest that the motion, which was filed well in advance of trial, was untimely. Under Maryland Rule 2-322, on which Evans relies, a motion to dismiss for failure to state a claim upon which relief can be granted, which is what Kravets filed here, does not have to be filed by a particular date. In fact, Maryland Rule 2-324 states, in relevant part, that "[a] defense of failure to state a claim upon which relief can be granted … may be made in any pleading or by motion for summary judgment under Rule 2-501 or at the trial on the merits." Md. Rule 2-324(a). Kravets's motion was timely, and the court did not err in considering it.

Lastly, regarding the court's decision to dismiss rather than allow for an amendment of the pleadings to substitute the HOA for Kravets as a party defendant, the record shows that Evans bears responsibility for that decision. Before issuing its ruling on Kravets's motion to dismiss, the court noted that, if Evans were to amend her pleading, she would have to "pull every docket entry from this case and serve it on the HOA." The court noted that it might therefore be easier to institute a new lawsuit because Evans would "only have to file that one complaint." Then, after indicating that it would be dismissing the complaint against Kravets, the court told Evans: "I'm happy to allow you leave to amend if that's what you want to do, but just understand what the service requirement is. Is that what you

would prefer the Court to do?" Rather than take the court up on its offer to allow substitution of the HOA by amendment, Evans asked the court for legal advice about instituting suit against the HOA, which the court declined to provide. From that exchange, it is clear that Evans was given the opportunity to receive the relief that she now seeks—to allow substitution by amendment—but that she declined. Accordingly, Evans cannot now claim that the court erred in refusing to grant her leave to amend.

In any event, we cannot say that the court erred or abused its discretion in choosing dismissal over substitution. First, there is nothing in CJP 5-422(d)(3) to indicate that the *court* is responsible for substituting the governing body as the party defendant when an officer or director is improperly named. Under Maryland Rule 2-241, which governs substitution of parties, substitution may be done by "[a]ny party to the action, any other person affected by the action, the successors or representatives of the party, or the court[.]" Md. Rule 2-241(b). Evans could have initiated the substitution herself, which the court gave her the option of doing, but she declined.

Furthermore, when substitution is effected, there are certain procedural requirements, including service of process, that must be satisfied. *Id.* The court was correct in noting that those requirements could prove more cumbersome than simply initiating a new suit, particularly for someone like Evans who already had several claims dismissed due to insufficiency of service of process. It is evident that the court considered those factors in reaching its decision. Given that Evans had ample time and opportunity to substitute the HOA as the defendant prior to the court's decision, the court was well within

its discretion in dismissing the action. *See* Md. Rule 2-241(d) ("If substitution is not made as provided in this Rule, the court may dismiss the action, continue the trial or hearing, or take such other action as justice may require.").

In sum, we hold that the court did not err in dismissing Evans's complaint for failing to name the HOA as the appropriate party defendant pursuant to RP § 11-118 and CJP § 5-422. We also hold that, under the circumstances, the court did not err or abuse its discretion in choosing to dismiss rather than substitute the HOA as the named defendant.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.