Circuit Court for Howard County
Case No. C-13-CV-23-000343

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

Nos. 1399 and 2115

September Term, 2023

LUBNA KHAN

v.

MARY KENDALL

Wells, C.J.
Leahy,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: October 18, 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 case stems from the dismissal of a complaint for failure to state a claim for which relief can be granted. Appellant, Lubna Khan, filed an amended complaint against the appellee, Mary Kendall — then-acting Director of the Howard County Department of Planning and Zoning ("DPZ") — seeking a writ of common law mandamus. Khan presents seven questions for our review,[1] which we have rephrased and consolidated into one question as follows:

Did the circuit court err in dismissing Khan's amended complaint?

For the reasons to follow, we shall affirm the judgment of the circuit court.

[1] Appellant phrased the questions presented as follows:

> 1. Did the lower court err as a matter of law in dismissing appellant amended complaint for writ of mandamus?
>
> 2. Did the lower court apply the proper standard in dismissing appellant's amended complaint?
>
> 3. Did the court err as a matter of law in holding that fashioning an enforcement action gives appellee prosecutorial discretion over the enforcement action?
>
> 4. Did the circuit court err for not considering appellant's averments in her opposition to motion to dismiss as part of her amended complaint?
>
> 5. Did the circuit court err for not considering appellant's averments in her opposition to motion to dismiss as part of her amended complaint?
>
> 6. Did the court have authority to direct appellee to bring some enforcement action for violation of kennels provision when it never identify ambiguity in board's ruling on violation of kennels provision?
>
> 7. Did the court abuse its discretion to dismiss appellants Amended Complaint that fully stated facts, amounting to legally sufficient causes of action, for which relief may be granted?

BACKGROUND

In February 2022, Khan submitted a noise complaint to DPZ concerning a commercial property located on Clarksville Pike in Clarksville (the "Property"). The Property is owned by 100% Land, Inc. and is occupied by its tenant, Dogs and Cats, LLC, which operates a pet services business known as Pinkie's Play Place (the "Business"). The Business offered the following services: indoor boarding of pets, care of pets during the day (indoors and outdoors in the backyard), pet grooming, and sale of pet supplies. The Business allowed up to 20 dogs at a time into the backyard from 7:00 a.m. to 7:00 p.m.

Khan's noise complaint involved the Business's use of the Property's backyard. Khan alleged that the Business was illegally allowing dogs to be outdoors all day and that the dogs barked nonstop, disturbing her use of her home, which is located directly across the street from the Property.

DPZ inspected the Property and concluded that the Business's use of the backyard did not violate the Howard County Zoning Regulations ("HCZR"). Khan appealed that decision to the Howard County Board of Appeals Hearing Examiner. The administrative hearing centered on the proper interpretation of "pet-related uses allowed as a matter of right in the B-2 zone[,]" where the Business was located. Those uses permit "kennels" under HCZR § 119.0.B(47) and "completely enclosed" "pet grooming establishments and daycare" under HCZR § 119.0.B(65).

At the hearing, DPZ argued that the Business was a kennel, which need not be completely enclosed under HCZR § 119.0.B(47). In the alternative, DPZ claimed that even

if the Business were a pet daycare, the chain-link fence surrounding the backyard satisfied the complete enclosure requirement under HCZR § 119.0.B(65).

The Hearing Examiner rejected DPZ's arguments and made the following findings in its January 2023 decision and order:

> 1. DPZ's decision that the use of the Property should classified [sic] *only* as a kennel was clearly erroneous and contrary to law and not based on substantial evidence.
>
> 2. DPZ's decision that the requirement of "completely enclosed" is met by a fence surrounding an area rather than enclosure with side walls and a celling was clearly erroneous and contrary to law and not based on substantial evidence.

The Hearing Examiner ordered "that the case is remanded to DPZ to reopen the violation case and give notice that activities on the [Property] are in violation of HCZR §119.0.B consistent with [the Hearing Examiner's] decision."

In March 2023, DPZ issued a citation to 100% Land, Inc. under HCZR § 119.0.B(65) for "operation of a pet grooming establishment [and] daycare not in a completely enclosed area[.]"

Khan then filed a complaint against DPZ's Director, Kendall, seeking a writ of common law mandamus for DPZ's failure to issue a citation against 100% Land, Inc. and Dogs and Cats, LLC for operating a kennel in violation of HCZR § 119.0.B(47). Kendall moved to dismiss the complaint for failure to state a claim for which relief can be granted. In that motion, Kendall argued that mandamus was inappropriate for three main reasons: (1) code enforcement is not a ministerial act, (2) Khan possessed an adequate alternative remedy (i.e., a private action seeking injunctive relief), and (3) Khan lacked a clear right

to a citation for HCZR § 119.0.B(47). The circuit court granted the motion to dismiss in August 2023.

Khan filed several post-judgment motions: motions to amend the judgment under Md. Rule 2-535 and motions for new trial under Md. Rule 2-533. The court denied those motions.

DISCUSSION

Khan claims that the circuit court erred in granting Kendall's motion to dismiss Khan's mandamus action. We review for legal correctness a trial court's decision to grant a motion to dismiss for failure to state a claim. *Rounds v. Md.-Nat'l Cap. Park & Plan. Comm'n*, 441 Md. 621, 635-36 (2015). We assume the truth of all well-pleaded facts and allegations in the complaint, as well as all inferences that may be reasonably drawn from them, in the light most favorable to the non-moving party. *Id.* at 636.

Common law mandamus is defined as follows:

> common law mandamus is "an extraordinary remedy" that "is generally used to compel inferior tribunals, public officials or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which the party applying for the writ has a clear legal right. The writ ordinarily does not lie where the action to be reviewed is discretionary or depends on personal judgment."

Falls Rd. Cmty. Ass'n, Inc. v. Baltimore Cnty., 437 Md. 115, 139 (2014) (quoting *Goodwich v. Nolan*, 343 Md. 130, 145 (1996)). The Supreme Court of Maryland "has repeatedly recognized that '[c]ourts have the inherent power, through the writ of mandamus, to correct abuses of discretion and arbitrary, illegal, capricious or unreasonable

acts; but in exercising that power care must be taken not to interfere with the legislative prerogative, or with the exercise of sound administrative discretion, where discretion is clearly conferred.'" *Matter of White*, 451 Md. 630, 651 (2017) (quoting *Hecht v. Crook*, 184 Md. 271, 281 (1945)).

Indeed, a writ of mandamus is "appropriate where the relief sought involves the traditional enforcement of a ministerial act (a legal duty) by recalcitrant public officials, but not where there is any vestige of discretion in the agency action or decision." *Baltimore Cnty. v. Baltimore Cnty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 570 (2014) (cleaned up). Moreover, "a writ of mandamus will not be granted where the petitioner has a specific and adequate legal remedy to meet the justice of the particular case and where the law affords [another] adequate remedy." *Philip Morris Inc. v. Angeletti*, 358 Md. 689, 712 (2000) (quoting *Brack v. Wells*, 184 Md. 86, 90-91 (1944)).

Here, the court properly dismissed Khan's complaint for mandamus for three key reasons: (1) Khan lacked a clear right to compel DPZ's issuance of a citation, (2) code enforcement is not a ministerial act, and (3) Khan has an adequate alternative legal remedy. We address each of these reasons in turn.

First, Khan lacked a clear right to compel DPZ to issue a citation for HCZR § 119.0.B(47). The Hearing Examiner did not mandate DPZ's issuance of a citation. Rather, the Hearing Examiner ordered DPZ "to reopen the violation case and give notice that activities on the [Property] are in violation of HCZR §119.0.B consistent with [the Hearing Examiner's] decision." Under Howard County Code ("HCC") § 16.1603(a)(1), DPZ may

— but is not required to — issue citations for zoning violations after notice is given: "The Director [of DPZ] *may issue a citation* to an alleged violator: (1) After the issuance of a notice of violation if the violation continues after the reasonable time [s]tated in the notice of violation has passed[.]" (emphasis added). *See also* HCC § 24.106(II)(a) ("If a violation continues after the reasonable time stated in the notice of violation and the person charged has neither made good-faith efforts to abate, correct or legalize the violation nor appealed the violation, the enforcement official *may issue* a citation to the person charged with the violation.") (emphasis added.) In sum, the Hearing Examiner lacked the authority to require DPZ's issuance of a citation. Thus, Khan lacked a clear right to compel DPZ to issue a citation for the Business's alleged violation of HCZR § 119.0.B(47).[2]

Second, the court properly dismissed Khan's complaint for mandamus because code enforcement is not a ministerial act. "While mandamus may be available to compel county officials to carry out certain zoning-related ministerial duties, such as the issuance of a particular type of permit when all requirements are met, a decision to deploy the county's resources to take particular enforcement actions is a discretionary—not ministerial—duty." *Falls Rd. Cmty. Ass'n, Inc*, 437 Md. at 143. Khan's mandamus action impermissibly

[2] To be sure, the Hearing Examiner concluded that DPZ erred in determining that the Property's fence satisfied the complete enclosure requirement for pet daycare/pet grooming establishments under HCZR § 119.0.B(65). DPZ issued a citation to the Business for violating HCZR § 119.0.B(65).

Despite Khan's contentions, the Hearing Examiner did not find that the Business violated HCZR § 119.0.B(47), which allows for kennels in the B-2 zoning district (where the Property is located).

attempted to compel DPZ to "take particular enforcement actions[.]" *Id.* As a result, the court properly dismissed Khan's complaint.

Lastly, the circuit court properly dismissed Khan's complaint because the law provides her with an adequate alternative remedy. As Kendall recognizes on appeal in this Court, Khan can "file a private action in Circuit Court seeking injunctive relief against 100% Land, Inc. and Dogs and Cats, LLC under any legal theory she deems appropriate." Indeed, a property owner's ability to seek injunctive relief — for "special damage" stemming from zoning law violations — is an adequate alternative remedy. *Kulbitsky v. Zimnoch*, 196 Md. 504, 508 (1950); *see also Cassel v. Mayor & City Council of Baltimore*, 195 Md. 348, 353 (1950) (holding that "a court of equity has jurisdiction to grant injunctive relief against the violation of a zoning ordinance on the complaint of an individual sustaining special damage as a result of such violation").

For all these reasons, the circuit court did not err in granting Kendall's motion to dismiss Khan's complaint for failure to state a claim for which relief can be granted.

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