

Circuit Court for Caroline County
Case No. C-05-CV-22-000107

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 2207

September Term, 2022

DURON HUGHES

v.

MARYLAND DEPARTMENT OF PUBLIC
SAFETY AND CORRECTIONAL SERVICES

Shaw,
Tang,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: September 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).

In 2022, Duron Hughes, the appellant, filed a complaint for declaratory judgment, later amended, in the Circuit Court for Caroline County against the Maryland Department of Public Safety and Correctional Services (the “State”), the appellee. The appellant had been convicted of a third-degree sex offense and alleged, among other things, that requiring him to register as a sex offender in Maryland conflicted with federal law.¹ He moved for summary judgment, which the court denied. The court then dismissed the amended complaint with prejudice. On appeal, the appellant presents four questions for our review, which we consolidate and rephrase into one:² Did the circuit court err in dismissing the

¹ In 1994, the United States Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (“Wetterling Act”). Pub. L. No. 103-322, 108 Stat. 1796 (1994) (repealed in 2006). The Act required states to establish its own program for registering sex offenders based on the Act’s guidelines. *Id.* In 2006, Congress enacted the Sex Offender Registration and Notification Act (“SORNA”). SORNA replaced the previous federal sex-offender registration laws and established a new, comprehensive national system for registering sex offenders. *See* 34 U.S.C. §§ 20901–20991 (2006). Under the new law, sex offenders were categorized into “tiers” based on the severity of the offense. *See* 34 U.S.C. §§ 20911, 20915. As with the previous sex-offender laws, states were required to establish a similar registration system. *See* 34 U.S.C. § 20912.

² The questions presented in Hughes’s brief are:

1. Is Third Degree Sex Offense 3-307(a)(3) a categorical match with Jacob Wetterling and Pam Lychner definition of a sexually violent offense?
2. Is a sexually violent offense determined by title 18 part 1 chapter 109(a) sexual abuse section 2241, 2242, 2243 and 2244? If so which section does Third Degree Sex Offense 3-307(a)(3) fall under[?]
3. Why has 3-307 A3 been removed as a sexually violent offense in 2018 Maryland code criminal procedure title 11 sex offender definition 11-701 but at the time of appellants conviction was used for lifetime registration[?]
4. Should the term sexually violent offense be subjected to the categorical approach being that the term is used to enhance the penalties of conviction[?]

amended complaint for declaratory judgment? We answer in the affirmative and remand the case to the circuit court for further proceedings.

BACKGROUND

In 2009, the appellant pleaded guilty to one count of third-degree sex offense in violation of § 3-307(a)(3) of the Criminal Law Article (“CL”) of the Maryland Code, which prohibits individuals from engaging in sexual contact with someone under the age of fourteen years if the perpetrator is at least four years older than the victim. He was sentenced to two years of imprisonment, with all but three months suspended. Later, he began registering as a sex offender in Maryland under the Criminal Procedure Article (“CP”) of the Maryland Code. Specifically, individuals convicted of certain enumerated crimes, including violations of CL § 3-307(a)(3), were required to register as a sex offender in Maryland for life. *See* CP § 11-707(a)(4)(ii) (2008).

On September 28, 2022, the appellant filed a pro se complaint for declaratory judgment, asking the court to “discontinue the registration requirements.” On December 5, 2022, the court dismissed the complaint without prejudice for failure to state a claim upon which relief could be granted. The court granted the appellant leave to “correct deficiencies” in the complaint within thirty days.

Amended Complaint for Declaratory Relief

Within days, the appellant filed an amended complaint for declaratory judgment. Hughes recounted the factual and procedural history that led to his guilty plea in the amended complaint. He alleged that, as a result of his conviction, his offense was classified

as a “sexually violent offense,” which required him to register as a sex offender for life, while those convicted of “non-violent child offenses would only have to register for 10 years at the time of [his] conviction[.]” He claimed that the classification of his offense as violent is “falsely stigmatiz[ing,]” and the lifetime-registration requirement is “life-strangling[.]” onerous, and would negatively impact him for life.

The appellant alleged that Maryland’s lifetime-registration requirement for violations of CL § 3-307(a)(3) was inconsistent with the federal sex-offender-registration guidelines. He claimed that the registration requirement and “other aspects of [his] treatment” violated his constitutional rights. He asserted five counts seeking various declarations. Under Count I – “Violation of the Equal Protection Clause,” the appellant asked the court to issue a declaratory judgment declaring that CL § 3-307(a)(3) “be subjected to the categorical approach and to not apply this [a]pproach, violates the Equal Protection Clause of the United States Constitution[.]”

Under Count II – “Cruel and Unusual Punishment,” the appellant requested that the court issue a declaratory judgment declaring that the requirement of lifetime registration for a conviction under CL § 3-307(a)(3) “be subjected to the categorical approach and to not apply this [a]pproach, violates the Eighth [A]mendment of the United States Constitution[.]” This was because “forcing [him] to register for life for a crime that does not accompany any of the plain language of what a sexually violent offense is should be considered cruel and unusual.”

Under Count III – “Violations of Due Process,” the appellant requested that the court issue a declaratory judgment declaring that CL § 3-307(a)(3) “be subjected to the categorical approach and to not apply this [a]pproach, violates the Fourteenth [A]mendment of the United States Constitution[.]” This is because he “looses [sic] a lot of his [b]asic rights as a citizen of the United States and for these rights to be taken away without the offense of conviction being classified beyond a reasonable doubt that the crime of conviction meets the classification of a sexually violent offense would violate due process[.]”

Under Count IV – “Violation of Procedural Due Process,” the appellant requested that the court issue a declaratory judgment declaring that the “categorical approach is be [sic] used when classifying [his] conviction of [CL § 3-307(a)(3)] a tier 3 registration requirement [and] [n]ot doing so clearly is [a] violation of [the] procedural Due Process Clause of the U.S. Constitution[.]” Under this count, the appellant sought an order “vacating and expunging” his “2007 and 2017 convictions[.]”

Under Count V – “Violation of Procedural Due Process – Involuntary Guilty Plea,” the appellant alleged that his defense counsel never advised him about the sex-offender registration or informed him that pleading guilty would result in his lifelong “violent” registration status on the Maryland Sex Offender Registry. He requested that the court issue a declaratory judgment “finding that counsel’s failure to advise a criminal defendant that pleading guilty will automatically require lifelong registration as a ‘violent’ sex offender on the Maryland Registry constitutes ineffective assistance of counsel, in violation of the

Sixth Amendment of the United States[.]” Under this count, Hughes sought an order “vacating and expunging” his 2009 conviction.

In all counts, the appellant requested “court costs, expert fees, and attorney’s fees in pursuing this action pursuant to 42 U.S.C. § 1988[.]”³

Dismissal of the Amended Complaint

On January 30, 2023, the appellant moved for summary judgment, seeking the removal of his name from Maryland’s sex-offender registry. On February 13, 2023, the court denied the motion without explanation.

The same day, the court entered an order dismissing the appellant’s amended complaint for declaratory judgment with prejudice. In the dismissal order, the court stated:

UPON CONSIDERATION of [the appellant’s] Complaint seeking (1) an issuance of a declaratory judgment due to ineffective assistance of Counsel, (2) an order vacating and expunging [the appellant’s] prior convictions of a sex offense as well as (3) an award for court costs and attorney’s fees; the [c]ourt has reviewed the complaint and has made a final determination. While [the appellant] has stated his right to due process was violated because he was not made aware by Counsel that a Tier III Sexual Offender Registrant must remain on the registry for life.

However, [the appellant] entered into a plea agreement on the record and confirmed at that time that his admission of guilt was done so knowingly and voluntarily. Additional [sic] regardless of a plea agreement, a sexual offense in the 3rd degree requires a Tier III Sexual Offender Registration per Maryland Law. Further, [the appellant’s] prior convictions of sexual offense are not eligible for expungement.

Further, [the appellant] has presented no sufficient legal argument that would require recovery of attorney’s fees. Thereby, is this [sic] 10th day of February 2023, by the Circuit Court for Caroline County, Maryland, hereby

³ Section 1988 allows recovery of attorney’s fees and expert fees in an action or proceeding to enforce civil rights. *See* 42 U.S.C.A. § 1988.

ORDERED that [the appellant’s] Motion for Declaratory Judgment is Dismissed with prejudice.

This timely appeal followed.

PARTIES’ CONTENTIONS

The appellant asks this Court to reverse the circuit court’s dismissal of his amended complaint for declaratory relief and remand the case for the circuit court to issue an order to remove him from the sex-offender registry. He contends that the court used the wrong approach to conclude that the offense to which he pleaded guilty was classified as a sexually violent offense, requiring him to register as a sex offender for life. He also contends that Maryland’s sex-offender-registration statute is more severe and applies to a broader class of individuals than its federal counterpart. The appellant argues, therefore, that the Maryland statute violates his rights under the Fifth, Eighth, and Fourteenth Amendments.

The State responds that the court properly denied the appellant’s request for declaratory relief. The State asserts that the appellant’s reliance on federal law is inappropriate because the appellant was required to register as a sex offender under Maryland law. The federal government, in enacting the guidelines for sex-offender registration, made clear that those guidelines were “a floor, not a ceiling” for states to create their own registration programs. The State also asserts that Maryland’s registration requirements did not offend the appellant’s constitutional rights.

DISCUSSION

The authority for a trial court to issue a declaratory judgment can be found in §§ 3-401 to 415 of the Courts & Judicial Proceedings Article (“CJP”) of the Maryland Code. The purpose of the subtitle “is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” CJP § 3-402.

It is well-settled that dismissal “is rarely appropriate in a declaratory judgment action.” *Broadwater v. State*, 303 Md. 461, 465 (1985). This is because

[w]here the plaintiff’s pleading sets forth an actual or justiciable controversy, it is not subject to demurrer since it sets forth a cause of action, even though the plaintiff may not be entitled to a favorable declaration on the facts stated in his complaint; that is, in passing on the demurrer, the court is not concerned with the question whether the plaintiff is right in a controversy, but only with whether he is entitled to a declaration of rights with respect to the matters alleged.

Hunt v. Montgomery Cnty., 248 Md. 403, 409 (1968) (citation omitted).

A trial court may properly dismiss a declaratory judgment action, but “only where there is a lack of jurisdiction or where a declaratory judgment is not an available or appropriate type of remedy.” *Christ by Christ v. Maryland Dep’t of Nat. Res.*, 335 Md. 427, 435 (1994) (citing various cases where dismissal was appropriate). “Where a controversy is appropriate for resolution by declaratory judgment, however, the trial court must render a declaratory judgment.” *Id.* “The court’s rejection of the plaintiff’s position on the merits furnishes no ground for dismissal.” *Id.* at 435–36. “[W]here a plaintiff seeks a declaratory judgment that a particular legal provision is valid (or invalid), and the court’s conclusion regarding the validity of the provision is exactly opposite from the plaintiff’s

contention, nevertheless the court must, under the plaintiff's prayer for relief, issue a declaratory judgment setting forth the court's conclusion as to validity." *East v. Gilchrist*, 293 Md. 453, 461 n.3 (1982).

The declaratory judgment defining the rights and obligations of the parties or the status of the thing in controversy must be in writing. *Aleti v. Metro. Balt., LLC*, 251 Md. App. 482, 519–20 (2021) (citation omitted). "It is not permissible for the court to issue an oral declaration." *Id.* at 520. We have explained that

[w]hen entering a declaratory judgment, the court must, in a separate document, state in writing its declaration of the rights of the parties, along with any other order that is intended to be part of the judgment. Although the judgment may recite that it is based on the reasons set forth in an accompanying memorandum, the terms of the declaratory judgment itself must be set forth separately. Incorporating by reference an earlier oral ruling is not sufficient, as no one would be able to discern the actual declaration of rights from the document posing as the judgment. This is not just a matter of complying with a hyper-technical rule. The requirement that the court enter its declaration in writing is for the purpose of giving the parties and the public fair notice of what the court has determined.

Id. If a request for declaratory judgment is ignored, there is no final judgment. *See Forward v. McNeily*, 148 Md. App. 290, 308 (2002) (no final judgment where the court did not make declarations regarding requests for declaratory judgment in three counts).

A reading of the record leads us to speculate that the court concluded that a justiciable controversy existed and dealt with the merits of the declaratory action in dismissing it. Indeed, there was no assertion by the State below or on appeal that the appellant did not present a justiciable controversy for which a declaratory judgment was appropriate. But we are unable to perform an appellate review on the merits because the

court did not explain why it dismissed all the counts in the amended complaint. The dismissal order arguably addressed Count V for “Violation of Procedural Due Process – Involuntary Guilty Plea,” but it neither explained why it dismissed Counts I through IV nor addressed the grounds raised in each of those counts.⁴

The court was also required to render a declaratory judgment as to each count in the manner set forth above, and it failed to do so. *See Broadwater*, 303 Md. at 469 (trial judge erred both in granting the motion to dismiss and in failing to declare the rights of the parties; vacating the judgment and remanding the case for further proceedings); *Secure Fin. Serv., Inc. v. Popular Leasing USA, Inc.*, 391 Md. 274, 286 (2006) (“The Circuit Court erred in dismissing the declaratory judgment action without declaring the rights and obligations of the parties.”). Therefore, we remand the case so that the court can issue a written declaratory judgment as to the claims raised in the amended complaint and explain its reasons for its determination as to each count.⁵ *See* Md. Rule 8-604(d)(1).

⁴ The order denying Hughes’s motion for summary judgment does not shed any light on why the court later dismissed all the counts in the amended complaint. *See Ralkey v. Minn. Mining & Mfg. Co.*, 63 Md. App. 515, 523 (1985) (“[A] denial of a motion for summary judgment does not ‘finally dispose’ of any matter—it merely permits the case to proceed based on the finding that a dispute concerning a material fact exists. The denial neither decides any issues of law nor precludes a subsequent finding that no factual disputes exist.”).

⁵ While this Court may, in its discretion, review the merits of the controversy and remand for entry of an appropriate declaratory judgment by the circuit court, *Bushey v. N. Assurance Co. of Am.*, 362 Md. 626, 651 (2001), we are unable to do so because the court did not explain why it dismissed all the counts in the amended complaint for declaratory judgment.

**JUDGMENT OF THE CIRCUIT COURT
FOR CAROLINE COUNTY NEITHER
AFFIRMED NOR REVERSED; CASE
REMANDED TO THAT COURT FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION; COSTS TO BE
PAID BY APPELLEE.**