

Circuit Court for Frederick County  
Case No. C-10-CV-20-000585

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 391

September Term, 2022

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RODNEY SPARKS

v.

MICHAEL TRUMBULL

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Reed,  
Tang,  
Zarnoch, Robert A.,  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Zarnoch, J.

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Filed: February 10, 2023

\*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

\*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

In the Circuit Court for Frederick County, Rodney Sparks, appellant, filed suit against his neighbor, Michael Trumbull, appellee, asserting a claim for tortious interference with prospective business advantage.<sup>1</sup> Trumbull moved to dismiss the second amended complaint. Following a hearing, the circuit court granted summary judgment in favor of Trumbull. Sparks appeals, presenting one multi-part question,<sup>2</sup> which we rephrase as:

I. Did the circuit court err by ruling that Sparks' business was unlawful and granting summary judgment in favor of Trumbull?

Trumbull moves to dismiss the appeal. For the following reasons, we deny the motion to dismiss and affirm the judgment of the circuit court.

### **FACTS AND PROCEEDINGS**

Sparks resides at 3990 Daisy Court, Monrovia in Frederick County (“the Property”). The Property is zoned R-1 Residential. Trumbull is his next-door neighbor.

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<sup>1</sup> Sparks also asserted claims for defamation and false light, but later withdrew them.

<sup>2</sup> The question as posed by Sparks is:

Did the Trial Court err in granting summary judgment where: 1) it based its decision on a 2017 ruling that Sparks' business, as operated at that time, was not lawful, 2) Sparks' business since the 2017 ruling has been in good standing with Frederick County, 3) Trumbull's complaints about Sparks' business in 2018, 2019 and 2020 have not resulted in sanction of Sparks' business by Frederick County, 4) Sparks has complied with the 2017 ruling to complete his exchanges with his customers outside his property, and 5) Sparks is licensed by both the Maryland Comptroller and Frederick County, including a Maryland trader's license?

Sparks “operates a business selling products for pets” and other miscellaneous “hard goods” out of his home. He obtains his merchandise from stores, such as Petco and PetSmart, and from an independent contractor; lists them for sale on Craigslist; and arranges to meet most of his customers at an agreed offsite location to complete the transactions. He stores his merchandise in his home as well as in a box truck and in a mobile home on the Property. He occasionally stores larger items, like lawn mowers, outside on the Property.

In March 2017, the Frederick County Department of Planning and Permits issued a civil citation to Sparks, charging him with “running a home occupation from a residen[ce] without permits or approvals” in violation of the Frederick County Zoning Code (hereinafter “the Zoning Code” or the “FCZC”). As we shall discuss in greater detail later in this opinion, with certain exceptions not relevant here, the Zoning Code prohibits retail sales in a residential zone. FCZC § 1-19-8.240(A)(5)(a)2.

Sparks elected a trial on the charge, which was held in the District Court of Maryland for Frederick County on July 27, 2017. The then acting Zoning Administrator, Tolson DeSa, testified at the trial that the County issued the citation after receiving a complaint about retail sales at the Property. DeSa met with Sparks, who stated that he possessed a valid trader’s license.<sup>3</sup> According to DeSa, a trader’s license has “[z]ero impact” upon compliance with the Zoning Code’s requirements for home occupations.

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<sup>3</sup> A “trader’s license” is governed by Md. Code, Bus. Reg. (“BR”) § 17-1803 and requires that any person who “does business as a trader in the State” possess a valid license. BR § 17-1803(a).

DeSa explained that Sparks previously had been permitted to operate a home occupation, but that his permit was revoked in 2008.

Sparks testified at the trial that he sold goods from his home, though he claimed that the majority of purchasers met him off the premises to consummate the sales. He testified that he did not believe he was running a business both because it was not profitable and because he considered it a hobby.

The court found that Sparks was listing “dozens and dozens” of items for sale on Craigslist and that he sold some of those items “from [his] home.” The court further found that this amounted to a retail sales business, whether it was profitable or not. In so ruling, the court commented:

you can't do it from your home, according to the [Zoning Code]. Somebody wants to buy a tractor, you pop it onto the trailer and you meet him over at the old Wal-Mart parking lot or some place. Somebody wants to buy things on eBay, you testified you go to other places and you bring them those items and you can do that. You can do that any place you want to as far as I can tell. I'm not telling you what to do but you can't do it from your home.

The court found Sparks guilty of operating a home occupation without a permit and ordered him to pay a \$100 fine, plus \$5 in court costs.

In the years that followed, Sparks continued listing goods for sale on Craigslist. In April 2020, he was criminally charged in the District Court for violating Governor Hogan's March 23, 2020 Executive Order establishing a State of Emergency due to

COVID-19 and prohibiting the operation of non-essential businesses.<sup>4</sup> The State ultimately entered a *nolle prosequi* on that charge.

On November 9, 2020, Sparks filed a complaint against Trumbull, which he twice amended.<sup>5,6</sup> In his second amended complaint, Sparks asserted claims for defamation, false light, and tortious interference with prospective business advantage, only the last of which is before us in this appeal. He alleged that Trumbull had engaged in online impersonation of Sparks by posting modified versions of Sparks' Craigslist advertisements to confuse customers; had defamed Sparks in social media posts; and had engaged in a campaign of harassment against Sparks. He sought damages and injunctive relief.

Trumbull moved to dismiss the second amended complaint. As pertinent, he argued that Sparks' claim for tortious interference failed because his business was not lawful, and, alternatively, that he could not show that he had sustained any damages because of Trumbull's alleged conduct. Trumbull attached exhibits to his motion,

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<sup>4</sup> During the criminal investigation, DeSa wrote to the State's Attorney's Office and the Sheriff's Office to advise that it was the position of the Division of Planning and Permitting that Sparks was not permitted to conduct any retail sales from the Property.

<sup>5</sup> In his first amended complaint, Sparks named Trumbull's adult son, Levi, as a defendant. Sparks dismissed the claims against Levi upon filing his second amended complaint.

<sup>6</sup> Trumbull counterclaimed for defamation, but later voluntarily dismissed his counterclaim.

including excerpts from Sparks’ deposition testimony; copies of Sparks’ tax returns; and excerpts from the transcript of a 2017 District Court trial.

Sparks opposed the motion to dismiss the tortious interference count and stipulated to the voluntary dismissal of the defamation and false light counts. He maintained that his business was legal, arguing that since 2017, he had complied with the Zoning Code and the District Court’s instructions by conducting sales away from the Property. He asserted he had “met his customers outside of his property” since that time and that the County’s decision not to prosecute the 2020 criminal charge for violating the State of Emergency was evidence of the continuing legality of his business. Sparks attached exhibits to his opposition, including an affidavit detailing Trumbull’s alleged defamatory and harassing conduct; the entire transcript of the 2017 District Court trial; excerpts of his deposition testimony; a copy of his current trader’s licenses issued by the County and the State; and excerpts of Trumbull’s deposition testimony.

On February 28, 2022, the circuit court held a hearing on the motion to dismiss. As a threshold matter, the parties agreed that because each had introduced matters beyond the pleadings, the motion to dismiss should be treated as one for summary judgment. *See* Md. Rule 2-322(c) (“If, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501[.]”). Sparks reiterated that he was withdrawing his claims for defamation and false light.

Trumbull’s counsel argued that Sparks’ business was unlawful under the Business Regulation Article, the Zoning Code, or both. He maintained that Sparks was required to list his fixed place of business on his trader’s license, which he identified as his home. Thus, to the extent that Sparks was making retail sales at various locations outside of the Property, he was in violation of the Business Regulation Article. Turning to the Zoning Code, counsel argued that Sparks was not permitted to make any retail sales from his home, even if he conducted most of the actual transactions off site. For either reason, Sparks’ business was not lawful and consequently, he could not maintain a claim against Trumbull for tortious interference with it. Alternatively, Trumbull argued that the evidence showed that Sparks had not sustained damages.

Sparks’ lawyer responded that his trader’s license accurately listed his fixed place of business as his home because that was where he stored his retail goods. Since 2017, however, Sparks had acted “consistent with the law” and had “not been found guilty of having customers come to his house.” He maintained that there was “no question that what he’s doing is legal[.]”

After hearing argument, the court asked the parties to submit supplemental briefs and set a new hearing date. In his supplemental brief, Sparks argued that he listed the Property on his trader’s license because “that is his fixed place of business. That is where he stores products. That is where he solicits customers on Craigslist. And that is where some of his customers come to pick up product.”

On April 8, 2022, the court reconvened and ruled from the bench. It reasoned that Sparks was not operating a “lawful home business,” noting that the transcript from the 2017 trial reflected that the District Court likewise found that Sparks was not permitted to operate his business from his home. For that reason, the circuit court granted summary judgment in favor of Trumbull on the tortious interference count. The court entered an order to that effect on April 18, 2022. This timely appeal followed.

On May 5, 2022, after the notice of appeal was filed, Trumbull moved to revise the judgment under Rule 2-535 to award attorneys’ fees as a discovery sanction<sup>7</sup> and/or for sanctions under Rule 1-341. Sparks opposed the motion. The motion remains pending in the circuit court.

### **STANDARD OF REVIEW**

Summary judgment is appropriate when the material facts in a case are not subject to genuine dispute and the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). This Court reviews the grant of a motion for summary judgment without deference, “examining the record independently to determine whether any factual disputes exist when viewed in the light most favorable to the non-moving party and in deciding whether the moving party is entitled to judgment as a matter of law.” *Steamfitters Loc. Union No. 602 v. Erie Ins. Exch.*, 469 Md. 704, 746 (2020) (citing *Rowhouses, Inc. v. Smith*, 446 Md. 611, 630 (2016)). “Evidentiary matters, credibility

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<sup>7</sup> The circuit court had reserved on a previously filed motion for discovery sanctions.



issues, and material facts which are in dispute cannot properly be disposed of by summary judgment.” *Taylor v. NationsBank, N.A.*, 365 Md. 166, 174 (2001). We review the grant of summary judgment solely on the grounds decided by the circuit court. *Sutton-Witherspoon v. S.A.F.E. Mgmt., Inc.*, 240 Md. App. 214, 232 (2019).

### DISCUSSION<sup>8</sup>

To establish a claim for tortious interference with prospective business advantage, a plaintiff must prove: “(1) intentional and willful acts; (2) calculated to cause damage *to the plaintiff in [his or her] lawful business*; (3) done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of the defendants (which constitutes malice); and (4) actual damage and loss resulting.” *Carter v. Aramark Sports and Ent. Servs., Inc.*, 153 Md. App. 210, 240 (2003) (cleaned up) (emphasis added). The circuit court ruled that Sparks failed to satisfy the second element because his business was not “lawful.”

Sparks contends that the circuit court improperly relied upon findings made by the District Court in 2017 and failed to recognize that, since that time, he had complied with the law by ensuring that he conducts sales away from the Property. He argues that, at a minimum, he generated “a genuine dispute of material fact [about] whether [he] has

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<sup>8</sup> Trumbull moved to dismiss the appeal for lack of jurisdiction, arguing that Sparks was attempting to challenge the final judgment in the 2017 civil citation case. This Court denied the motion without prejudice to Trumbull seeking the same relief in his brief, which he did. Because we conclude that the issue on appeal does not amount to a collateral attack on an enrolled judgment, we deny the motion to dismiss and reach the merits.

completed his exchanges with his customers away from his home since [2017.]” Elsewhere in his brief, however, he concedes that he still makes some sales at his home, repeating the assertion made in his supplemental brief in the circuit court that “some of his customers come [to his home] to pick up products.” In his view, so long as he “limit[s] the number of customers who come to his home” and makes most of his sales by delivering the products to customers off the premises, his business is lawful.

Trumbull responds that Sparks is not lawfully permitted to make *any* sales from his home. The County, as *amici*,<sup>9</sup> likewise takes the position that Sparks’ business remains unlawful under the Zoning Code.

Turning to the Zoning Code, we are guided by the familiar principals of statutory interpretation. *See Cremins v. Cnty. Comm’rs of Washington Cnty.*, 164 Md. App. 426, 448 (2005) (“When we review the interpretation of a local zoning regulation, we do so

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<sup>9</sup> In accordance with Md. Rule 8-511’s liberal grant of amicus curiae filings, this Court, on December 5, 2022, granted Frederick County’s motion for leave to file an amicus brief. However, we cannot ignore, without comment, the County’s disclosure in its motion that “legal counsel to Appellee Trumbull[] assisted with the preparation of the Brief.” Such a disclosure, which was required by Md. Rule 8-511(b)(1)(E) (“[I]dentify every person ... who made a ... contribution to the preparation or submission of the brief[.]”) does not mandate a denial of the motion or a striking of the amicus brief. While we frown on such a practice, we do not favor such drastic action. Rather, while Md. Rule 8-511 is silent on the impact of disclosure of outside participation, it is also silent on the weight we should accord such a filing. In our view, a wise analysis suggests the proper course here. *See Nancy Bage Sorenson, The Ethical Implications of Amicus Briefs: A Proposal for Reforming Rule 11 of the Texas Rules of Appellate Procedure*, 30 St. Mary’s L.J. 1219, 1251 (1999) (“[T]he court may have been less persuaded by the arguments set forth if presented with the knowledge that a party’s counsel actually created or participated in the creation of the amicus brief.”); *id.* at 1251 n.173 (“[T]he knowledge that the brief was actually authored by a party to the suit would cause the court to either discard or pay less attention to the arguments set forth in the brief.”).

under the same canons of construction that apply to the interpretation of statutes.” (quotation marks and citation omitted)). We thus seek to ascertain and effectuate the purpose of the local legislative body by reference to the plain language of the zoning regulation and, if that language is clear and unambiguous, we ordinarily look no further. *Wheeling v. Selene Fin. LP*, 473 Md. 356, 376-77 (2021).

The FCZC defines a “Home Occupation” to mean:

Any occupation or business use conducted entirely within a dwelling or an accessory structure, or both, by a resident of the property, and which is clearly an incidental residential use of the building, excluding antique shops in the VC and GC; bed and breakfast; commercial repair or storage of automobiles, watercraft, or other motor vehicles; commercial stables, kennels, and nurseries; mortuary establishments; professional offices; restaurants or tea rooms.

FCZC § 1-19-11.100. Sparks, by his own admission, runs his Craigslist business from his dwelling. He stores his merchandise there, posts advertisements on Craigslist from his home computer, and lists the Property as his fixed place of business on his trader’s licenses. He also testified at his deposition that he runs his business from his home. His business meets the definition of a home occupation.

A home occupation may be a permitted accessory use in a residential zone if the resident satisfies substantive and procedural requirements for its operation. First, all home occupations must comply with nine “[g]eneral home occupation standards.” FCZC § 1-19-8.240(A)(5)(a)-(c). The general standards prohibit “retail sales ..., other than goods grown, produced or assembled on the premises” from being “conducted on the premises[,]” unless the retail sales are “only incidental to ... the business.” FCZC § 1-19-

8.240(A)(5)(a)(2). Undisputedly, Sparks does not grow, produce, or assemble any of the products he sells and the sales are the main purpose of his business. Consequently, he is not authorized to make any retail sales “on the premises” of the Property.

Second, if a home occupation meets the general standards, in order to be a permitted accessory use, it also must satisfy additional criteria for either a “no impact” or “minor impact” home occupation. A “no impact” home occupation must satisfy five additional substantive standards, including that there be no more than five business-related vehicle visits per week if the residence is on a local road (or per day if the residence is on a “collector roadway”) and that no more than 600 feet of accessory structure be dedicated to the home occupation. FCZC § 1-19-8.240(A)(5)(b). Procedurally, to qualify as a “no impact” home occupation, the resident must complete a “home occupation survey form in the Department of Planning and Development Review.” *Id.* Though Sparks appears to argue that his business satisfies the “no impact” substantive standards because he limits the number of customers who come to the Property, he does not claim to have completed the requisite survey form. (The County confirms this in its brief.) Further, as mentioned, because the purpose of any business-related vehicle visit to the Property would be a retail sale, it is otherwise prohibited under the general home occupation standards.

A “minor impact” home occupation likewise must satisfy five additional substantive standards, including that there be no more than two business-related vehicle visits per day and no more than 10 per week for residences on local roads and no more

than 600 square feet of accessory structure use dedicated to the home occupation. FCZC § 1-19-8.240(A)(5)(c). Procedurally, to qualify as a “minor impact” home occupation, a resident must obtain a zoning certificate from the Department of Permits and Inspections. *Id.* Sparks does not have a current zoning certificate.

For all these reasons, to the extent that the magnitude of retail sales conducted on the Property is disputed, it is not material. Sparks has not satisfied either of the procedural requirements under the Zoning Code necessary to legitimize his operation of a home occupation. For these reasons, we affirm the grant of summary judgment.

We express no opinion on the merits of Trumbull’s motion to revise and for sanctions, which remains pending for decision in the circuit court. *See Litty v. Becker*, 104 Md. App. 370, 376 (1995) (noting that parties’ entitlement to attorneys’ fees is collateral to the merits of the action and the conclusion of the original proceeding does not divest the circuit court of jurisdiction to consider a motion for fees).

**MOTION TO DISMISS APPEAL  
DENIED; JUDGMENT OF THE  
CIRCUIT COURT FOR  
FREDERICK COUNTY AFFIRMED.  
COSTS TO BE PAID BY  
APPELLANT.**