Circuit Court for Worcester County
Case No. C-23-CV-19-000227

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 570

September Term, 2020

ROBERT COWGER, JR.

v.

POCOMOKE CITY, ET AL.

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Berger, J.

Filed: June 21, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case is before us on appeal from an order in the Circuit Court for Worcester County granting summary judgment in favor of Pocomoke City ("the City"), appellee.[1] The lawsuit was filed by Robert Cowger, Jr. ("Cowger"), the appellant. Cowger alleged that the City violated the City Charter in effecting Cowger's termination as City Manager and failed to pay him all the wages he was due under Maryland law.

Cowger presents one issue for our consideration on appeal,[2] which we have rephrased as follows:

> Whether the trial court erred as a matter of law in ruling that the City complied with the required procedure of its City Charter in terminating Cowger's employment as City Manager.

For the reasons explained herein, we shall hold that the trial court did not err in granting the City's motion for summary judgment regarding the City's compliance with its City Charter. We shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

On August 28, 2017, Cowger was appointed as the City Manager of Pocomoke City, Maryland. On April 15, 2019, the City Council met in a closed session to discuss

[1] The appellant filed suit against the City; the Mayor of the City, Bruce Morrison ("the Mayor"); and four of the five City Council members: R. Scott Holland ("Holland"); Diane Downing ("Downing"); R. Dale Trotter ("Trotter"); and Todd J. Nock ("Nock"). For clarity, we will refer to the appellees collectively as "the City" and individually as indicated above.

[2] Cowger's original question presented is as follows:

> Was the trial court correct in ruling as a matter of law the City had followed its own Charter in firing the City Manager?

employment issues related to Cowger. At that time, the City Council voted three to two in favor of preliminary Resolution No. 519, calling for Cowger's removal as City Manager. At that time, Cowger was suspended and did not perform any work for the City after that point. The following day, the City issued a press release announcing that Cowger was no longer employed as the City Manager. Through counsel, Cowger challenged the action taken at the April 15 meeting, alleging that the vote was improperly held in a closed session and that one of the City Council members did not yet have the right to vote on a proposed resolution.[3]

After receiving Cowger's challenge to the City's April 15 action, the City undertook a "do-over" on April 29, 2019. During the meeting on April 29, 2019, the City Council held an open session calling for the removal of Cowger as the City Manager. During this meeting, the City Council adopted preliminary Resolution No. 519 calling for Cowger's removal. This version of the Resolution provided that Cowger was suspended from duty and was owed the balance of his salary plus two months' severance pursuant to Section C-22 of the City Charter. The document memorializing the adoption of preliminary Resolution 519 contained a line providing that the Resolution was introduced on April 15 and passed on April 29. Cowger was then paid a severance for the months of May and

[3] Cowger contends that Councilman Holland was not yet eligible to vote on the proposed resolution because he was elected on April 1, 2019 and, therefore, was not allowed to join the Council and vote until April 16, 2019 pursuant to Section C-3 of the City Charter.

June of 2019. Further, during the litigation in the trial court, the City paid Cowger the balance of his April salary, plus interest.

On May 24, 2019, Cowger requested, in writing, a public hearing on his proposed removal pursuant to Section C-22 of the City Charter. In response, the City Council held a public hearing on June 18, 2019 with Senior Judge David B. Mitchell acting as the moderator. After the public hearing, on June 20, 2019, the City adopted final Resolution No. 519, terminating Cowger as City Manager.

On July 26, 2019, Cowger filed a complaint in the Circuit Court for Worcester County against the City, seeking reinstatement as City Manager and an award of back pay. On August 9, 2019, the City filed a motion to dismiss or for summary judgment. On August 22, 2019, Cowger filed a cross-motion for summary judgment and an opposition to the City's motion. The City filed a reply on August 23, 2019. The trial court held a hearing on the outstanding motions on December 10, 2019 and denied both parties' motions. On December 13, 2019, the City filed a motion for reconsideration and an answer to Cowger's complaint. That same day, Cowger filed an opposition to the City's motion for reconsideration. The trial court denied the City's motion for reconsideration on December 31, 2019.

Cowger filed an amended complaint on January 14, 2020. That same day, the City filed an answer to Cowger's amended complaint and a motion for partial summary judgment as to counts II and III of the amended complaint. On January 16, 2020, Cowger filed an opposition to the City's motion for partial summary judgment and the City filed a

reply. On February 7, 2020, the trial court ordered that the City's motion would not be ruled upon until discovery was completed. The City filed an amended answer on February 11, 2020. On May 19, 2020, the City filed an additional motion for summary judgment. Cowger filed a renewed motion for summary judgment on May 27, 2020. Both parties filed an opposition.

The trial court held a motions hearing regarding the parties' competing summary judgment motions on July 13, 2020. During the hearing, the trial court explained on the record that it would deny Cowger's motion for summary judgment and grant the City's motions for summary judgment as to all three counts. Cowger filed a notice of appeal on August 10, 2020. The trial court issued its written opinion on September 16, 2020. In its written opinion, the trial court granted the City's motion for summary judgment as to Counts I and II. The trial court, however, granted Cowger's motion for summary judgment as to Count III. On September 17, 2020, the City filed a motion to alter or amend the trial court's judgment, alleging that the court erroneously stated in its opinion that Cowger was not paid severance for May and June, resulting in its granting of Cowger's motion for summary judgment as to Count III. Cowger filed a reply on September 29, 2020 and an additional notice of appeal on October 14, 2020. On October 16, 2020, the trial court entered an order granting the City's motion to alter or amend its judgment and revised its earlier judgment, granting the City's motion for summary judgment as to Count III. Cowger filed an additional notice of appeal on October 20, 2020.[4]

[4] Cowger's three notices of appeal have been consolidated into this single appeal.

DISCUSSION

"Maryland Rule 2-501(e) provides, in relevant part, that 'the court shall enter judgment in favor of or against the moving party if the motion and response show that 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.'" *O'Connor v. Balt. Cnty.*, 382 Md. 102, 110 (2004) (quoting Md. Rule 2-501(e)). "We review a trial court's grant of a motion for summary judgment *de novo*, and we construe all 'reasonable inferences that may be drawn from the undisputed facts against the moving party.'" *Six Flags Am., L.P. v. Gonzalez-Perdomo*, 248 Md. App. 569, 580 (2020) (quoting *Mathews v. Cassidy Turley Md., Inc.*, 435 Md. 584, 598 (2013)).

"When reviewing a grant of summary judgment, we must make the threshold determination as to whether a genuine dispute of material fact exists." *Remsburg v. Montgomery*, 376 Md. 568, 579 (2003). Further, we must look to determine "'whether the trial court's legal conclusions were legally correct.'" *Fraternal Order of Police Montgomery Cnty. Lodge 35 v. Montgomery Cnty. Executive*, 210 Md. App. 117, 128 (2013) (quoting *Montgomery Cnty., Md. v. Fraternal Order of Police, Montgomery Cnty. Lodge 35, Inc.*, 427 Md. 561, 572 (2012)). "We review *de novo* . . . the interpretation of a statute" or charter. *Gomez v. Jackson Hewitt, Inc.*, 427 Md. 128, 142 (2012) (internal citations omitted); *see also O'Connor*, *supra*. 382 Md. at 113.

Before turning to the question of law, we must first determine whether the trial court properly determined that no genuine dispute of material fact exists. *O'Connor*, *supra*, 382

Md. at 110–11. "We construe the facts properly before the [C]ourt, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party." *Id.* at 111 (citing *Todd v. MTA*, 373 Md. 149, 155 (2003)). The mere presence of a factual dispute will not "render summary judgment improper[,]" as the dispute must be material. *Id.* (citing *Beatty v. Trailmaster*, 330 Md. 726, 738 (1993)).

In our view, the trial court did not err in determining that no material dispute of fact exists. There is no dispute that the removal of the City Manager is governed by the City Charter. Further, the parties agree that there was a closed meeting held on April 15, 2019 to discuss Cowger's employment. The parties also do not dispute that the City Council held a public hearing on April 29, 2019 and adopted preliminary Resolution No. 519 calling for the removal of Cowger and that a public hearing was held, at Cowger's request, on June 18, 2019. Finally, on June 20, 2019, the parties agree that the City Council held a public hearing adopting final Resolution No. 519 calling for Cowger's removal. "The only [dispute] is the legal effect of the undisputed facts." *Id.* at 112.

We now turn to the question of whether the City was entitled to judgment as a matter of law. Cowger argues that the trial court erred by ruling, as a matter of law, that the City removed Cowger as City Manager in accordance with the procedural requirements of the City Charter. Specifically, Cowger argues that the City Charter requires the City Council to hold no less than four separate public meetings to effectuate the City Manager's

removal.[5] The City argues that the City Council complied with the procedural requirements of the City Charter by adopting a preliminary resolution and then a final resolution in two separate public meetings.

Section C-22 of the City Charter provides that:

> The [City] Council shall appoint the City Manager for an indefinite term and may remove him by a majority vote of its members. At least thirty days before such removal shall become effective, the [City] Council shall, by a majority vote of its members, adopt a preliminary resolution stating the reason for his removal. The Manager may reply in writing and may request a public hearing, which shall be held not earlier than twenty days nor later than thirty days after filing of such a request. After such public hearing, if one be requested, and after full consideration, the [City] Council, by a majority vote of its members, may adopt a final resolution of removal. By the preliminary resolution the [City] Council may suspend the Manager from duty, shall in any case cause to be paid him any unpaid balance of his salary and his salary for the next two calendar months following adoption of the preliminary resolution.

Cowger asserts that his termination violated Section C-22 of the City Charter because that section, when read in congruence with Sections C-12 and C-6, requires no less than four public meetings to be held to effect removal of the City Manager.

Section C-12 of the City Charter provides:

> No ordinance or resolution shall be passed at the meeting at which it is introduced. At any regular or special meeting of the [City] Council held not less than six, nor more than sixty days, after the meeting at which an ordinance or resolution was introduced, it shall be passed, or passed as

[5] At oral argument, counsel for Cowger explicitly argued that the City Council is required to hold five separate public meetings to remove the City Manager.

> amended, or rejected, or its consideration deferred to some specified future date.

Further, Section C-6 requires that "the residents of the City shall have a reasonable opportunity to be heard at any meeting in regard to any municipal question." Cowger asserts that the aggregate meaning of these three sections of the City Charter is that any resolution -- either preliminary or final -- must be presented at no less than two, public City Council meetings. Additionally, the City Council would be required to hold another public meeting if requested by the City Manager. Therefore, Cowger's interpretation of the City Charter would require the City Council to hold five separate public meetings to remove the City Manager. We disagree.

The Court of Appeals has repeatedly held "that a county charter is equivalent to a constitution." *Save Our Streets v. Mitchell*, 357 Md. 237, 248 (2000) (internal citation and quotations omitted). Accordingly, "[l]ocal ordinances and charters are interpreted under the same canons of constructions that apply to the interpretation of statutes." *O'Connor*, *supra*, 382 Md. at 113 (citing *Howard Rsch. v. Concerned Citizens*, 297 Md. 357, 364 (1983)). "The cardinal rule of statutory interpretation is to ascertain the intention of the legislature." *Id.* (citing *Oaks v. Connors*, 339 Md. 24, 35 (1995)). "To determine what that intention was, we look first to the language of the" charter. *Atkinson v. Anne Arundel Cnty.*, 236 Md. App. 139, 159 (2018) (internal citation and quotations omitted). So long as the charter's meaning is plain and unambiguous, we need look no further. *See id.* "We neither add nor delete words to a clear and unambiguous [charter] to give it a meaning not reflected by the words the [charter] used or engage in a forced or subtle interpretation in

an attempt to extend or limit the [charter's] meaning." *Taylor v. NationsBank*, 365 Md. 166, 181 (2001). "Moreover, whenever possible, the [charter] should be read so that no word, clause, sentence[,] or phrase is rendered superfluous or nugatory." *Id.*

Nevertheless, if the text invites multiple interpretations, "we must turn to the various interpretive tools at our disposal to resolve the resulting ambiguity." *Atkinson*, *supra*, 236 Md. App. at 159. Critically, we must seek to "avoid constructions that are illogical, unreasonable, or inconsistent with common sense." *Nesbit v. Gov't Employees Ins. Co.*, 382 Md. 65, 75 (2004). We will assign the words of the charter their "ordinary and natural meeting" and we will not "divine a[n] . . . intention contrary to the plain language of a [charter] or judicially insert language to impose exceptions, limitations[,] or restrictions not set forth by the [charter]." *O'Connor*, *supra*, 382 Md. at 113 (internal quotations and citations omitted).

When reading Sections C-12 and C-22, we first note the difference in word choice between the two sections. Specifically, Section C-12 prohibits an ordinance or resolution being "passed" at the same meeting at which it was introduced. In contrast, Section C-22, which specifically relates to the removal of a City Manager, does not use the term "pass." Rather, Section C-22 requires that the City Council "adopt" a preliminary resolution, and subsequently, a final resolution. Further, Section C-22 provides for a separate public hearing so long as the City Manager requests one in writing after the City Council's adoption of the preliminary resolution.

There is no indication that Sections C-12 and C-22 of the City Charter are in conflict. Specifically, there is no indication that a logical and careful reading of the City Charter requires the City Council to hold four separate meetings to remove the City Manager. *See Nesbit*, *supra*, 382 Md. at 75. Rather, Section C-22 requires the City Council to adopt a single resolution in two parts: "preliminary" and "final." Here, the City Council was dealing with one resolution, Resolution No. 519, calling for the removal of Cowger as the City Manager pursuant to Section C-22. To state it simply, Section C-22 of the City Charter requires: (1) the adoption of a preliminary resolution at least thirty days before the removal becomes effective; (2) that the City Manager be provided an opportunity to have a public hearing not later than thirty days after his written request; and (3) the adoption by a majority vote of the City Council of a final resolution after full consideration.

We agree with Cowger that the April 15 meeting did not comply with the requirements of the City Charter. Not only was the meeting not held publicly, but there was a debate as to whether one of the City Council members was eligible to vote at that time.[6] Accordingly, the April 15 meeting did not result in the adoption of an effective

[6] The City Council may have been authorized to move the meeting into a closed session to discuss the removal of Cowger as the City Manager. *See* Md. Code (2014, 2019 Repl. Vol.), § 3-305(b) of the General Provisions Article ("Gen. Prov."). Removing Cowger arguably falls within the parameters listed in § 3-305(b)(1)(i) that allow the meeting to be moved into a closed session. *Id.* We need not address this issue in light of our holding that the meeting that followed satisfied the requirements outlined in the City Charter.

preliminary resolution calling for the removal of Cowger as the City Manager.[7] Nevertheless, the meeting on April 29 followed the requirements outlined in the City Charter. The meeting was an open session and the properly voting members voted to adopt preliminary Resolution No. 519 removing Cowger.[8]

On May 24, 2019, Cowger, through counsel, requested a public hearing pursuant to Section C-22. The City Council held a public hearing on June 18, 2019. Finally, on June 20, 2019 at an additional public meeting, the City Council adopted final Resolution No. 519 removing Cowger as the City Manager. These actions by the City Council complied with the requirements of Section C-22 of the City Charter. Accordingly, we hold that the trial court was legally correct in granting the City's motion for summary judgment as to Count I of Cowger's complaint.[9]

[7] In our view, any *ultra vires* action in the April 15 meeting was cured by the public meeting held on April 29, 2019, which followed the proper procedural requirements of the City Charter.

[8] Although the preliminary resolution indicates that it was introduced on April 15, 2019, the record is clear that it was adopted at the City Council public meeting on April 29, 2019. This typographical error is not relevant to our analysis.

[9] Alternatively, the City contends that Cowger cannot seek relief via common law mandamus. The City argues that the removal of Cowger was within the legislative prerogative and, therefore, relief via common law mandamus is unavailable. *See Talbot Cnty. v. Miles Point Props., LLC*, 415 Md. 372, 397 (2010) (internal citation omitted). This argument was not fully developed in the City's brief, nor was it addressed at all by Cowger in his reply brief. In light of our holding that the City followed the requirements of the plain language of the City Charter in removing Cowger as the City Manager, we need not reach the merits of the City's alternative contention that Cowger cannot obtain relief via common law mandamus.

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