

Circuit Court for Anne Arundel County
Case No. C-02-CV-19-003603

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 656

September Term, 2020

DANNY NOONAN, LLC

v.

ANNE ARUNDEL COUNTY SHERIFF

Berger,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: September 14, 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.

Danny Noonan, LLC purchases tax sale certificates at tax sales in Maryland.¹ By way of the tax sale process, Danny Noonan received a writ of possession for an occupied property in Glen Burnie, Maryland on September 10, 2019. According to Danny Noonan’s complaint, the Anne Arundel County Sheriff was scheduled to serve the writ of possession on November 5, 2019 but refused to serve the writ because the occupant of the property filed a motion to stay the eviction on October 25th, and that motion had not yet been ruled on by the Court. On November 5th, counsel for Danny Noonan filed a petition for contempt against the Anne Arundel County Sheriff for failing to serve the writ of possession.² On November 7th, Danny Noonan filed a complaint against the Anne Arundel County Sheriff

¹ Danny Noonan, and Danny Noonan’s affiliates Ty Webb, Thornton Mellon, and Al Czervik, are no strangers to this Court. *See Ty Webb, LLC v. Mayor and City Council of Baltimore*, No. 942, Sept. Term 2020; *Thornton Mellon, LLC v. Adrienne Dennis Exempt Trust*, 250 Md. App. 302 (2021); *See Thornton Mellon, et al. v. Frederick County Sheriff, et al.*, ___ Md. App. ___, Nos. 2224, 2330, 2580, Sept. Term 2019 & No. 151, Sept. Term 2020 (filed September 3, 2021).

² This petition for contempt was filed in *Thornton Mellon, LLC v. Suhrie*, Case No. C-02-CV-16-003905, in which Danny Noonan’s affiliate Thornton Mellon moved for and received the order foreclosing on the prior owner’s right to redeem the property subsequent the tax sale. On November 13, 2018, the circuit court denied the prior owner’s motion to stay the eviction. On December 4, 2018, the sheriff opposed Danny Noonan’s petition for contempt. Finally, on December 16, 2018, the return of service for the writ of possession was filed, which meant that the writ of possession had been served. Thereafter, the petition for contempt was denied as moot.

When the sheriff went to serve the writ of possession in the *Suhrie* case, Thornton Mellon failed to provide the moving crew needed to remove the personal property from the residence, in accordance with the sheriff’s policy, and sought to have the so-called mover policy declared void. The circuit court refused to do so, and Thornton Mellon’s motion for reconsideration was denied. Thornton Mellon appealed, and this Court dismissed the appeal on the grounds that Thornton Mellon—having assigned its interest in the property to Danny Noonan—did not have standing to maintain the suit. *Thornton Mellon, LLC v. Anne Arundel Cty., et al.*, No. 462, Sept. Term 2018.

for failing to serve the writ of possession. The complaint alleged that the sheriff had a so-called refusal policy, “whereby [the sheriff] unilaterally refuse[s] to enforce a [writ of possession] in the event that a ‘motion to stay’ has been filed though not granted.” The complaint alleged that the refusal policy was not “codified in any statute, law, code, or case” and that the policy is “unconstitutional and void and not supported by any applicable law or authority.” Danny Noonan sought a declaratory judgment that the refusal policy was null and void, and an injunction barring the sheriff from enforcing the policy. On November 13th, the circuit court denied the prior owner’s motion to stay the eviction, and Danny Noonan’s writ of possession was served no later than December 16th.

The sheriff moved to dismiss on the grounds that the complaint failed to make sufficient allegations to confer standing to Danny Noonan under the Declaratory Judgment Act, but argued in the alternative, that the sheriff has the implied authority to reschedule an eviction where there is a pending motion to stay the eviction. After a hearing, the circuit court granted the sheriff’s motion to dismiss Danny Noonan’s complaint. The circuit court found:

[T]hat the action that gave rise to the lawsuit is [not] subject to the Declaratory Judgment Act, and the language of that act is very specific that it states that ... somebody[’s] rights [,] status or other legal relations are affected, and these are the operative words, “by a statute, municipal ordinance, administrative rule or regulation, contract or franchise[.]”

In this case, there’s absolutely no reference in the complaint and in the opposition to any statute, municipal ordinance, administrative rule or regulation, contract or franchise, so there’s no challenge to any of those things [I]t fails at the very beginning of not stating a claim because this particular act

does not fall within the [purview] of the types of actions for which declaratory judgment can be filed.

The circuit court also found that Danny Noonan lacked standing to sue because the motion to stay the eviction was denied back in November of 2019, and possession of the property was transferred to Danny Noonan sometime in mid-December of the same year. The circuit court issued a written order dismissing Danny Noonan’s complaint because the acts complained of were not subject to the Declaratory Judgment Act, and because Danny Noonan lacked standing to sue.

Danny Noonan noted a timely appeal.

I. DANNY NOONAN’S COMPLAINT DID NOT STATE A CLAIM FOR WHICH RELIEF COULD BE GRANTED UNDER THE DECLARATORY JUDGMENT ACT

Danny Noonan argues that the circuit court incorrectly dismissed the complaint seeking to invalidate the refusal policy, because the sheriff’s refusal policy was, in fact, subject to the Declaratory Judgment Act. We reject Danny Noonan’s contention.

The Declaratory Judgment Act, specifically provides that

[a]ny persons ... whose rights, status, or other legal relations are affected by a statute, ordinance, administrative rule or regulation, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, administrative rule or regulation, land patent, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

MD. CODE, CTS. & JUD. PROC. (“CJ”) § 3-406. Thus, this statute establishes what a person must allege to sustain an action brought under the Declaratory Judgment Act. To bring suit under the Act, a person’s legal relations must be affected by either a “statute, ordinance, administrative rule or regulation, contract, or franchise.” CJ § 3-406. The

sheriff's refusal policy, if such a thing exists, is neither statute, nor ordinance, nor administrative rule or regulation, nor contract, nor franchise. The refusal policy, as we understand it, is an informal, internal departmental policy where, before serving a writ of possession and, in effect, evicting the prior owner occupant, the sheriff checks the docket to see whether there are any pending motions. If there is a pending motion to stay the eviction, the sheriff has decided that the writ won't be served until the motion is ruled on. This Court, Danny Noonan, and the sheriff know that after a writ of possession has been issued through the tax sale process, the prior owner's right to redeem the property has necessarily been foreclosed. MD. CODE, TAX-PROP. ("TP") § 14-827 (In a tax sale, "[t]he owner or other person that has an estate or interest in the property sold by the collector may redeem the property at any *time until the right of redemption has been finally foreclosed* under the provisions of this subtitle") (emphasis added); *Mayor and City Council of Baltimore v. Thornton Mellon, LLC*, 249 Md. App. 231, 239 (2021) (same). This, however, does not forestall the possibility that a motion filed after the foreclosure judgment will bring to light some error, or important detail that changes the circumstances. The odds of this happening are low, and, as here, motions to stay an eviction filed after a foreclosure judgment, will almost always be denied. But if the sheriff wants to wait until a court denies the motion, and not assume it will be denied, we do not fault them for waiting. The trial court did not err in finding that Danny Noonan's complaint failed to meet the criteria for an action brought under the Declaratory Judgment Act.

Even if we were inclined to consider the refusal policy as an "ordinance, administrative rule or regulation, contract, or franchise," it still does not, in any substantive

way, affect Danny Noonan’s rights, status, or legal relations. Danny Noonan still owns the property, and as the record demonstrates, was placed in possession of the property shortly after the circuit court denied the occupant’s motion to stay as moot.

And, finally, even if we were persuaded that Danny Noonan could seek relief under the Declaratory Judgment Act, and that there were antagonistic claims or an actual controversy between Danny Noonan and the Anne Arundel County Sheriff to confer standing, we would find that the refusal policy is valid because the sheriff is allowed to exercise their fairly implied powers to adopt policies for the service of writs of possession. *See Thornton Mellon, et al. v. Frederick County Sheriff, et al.*, ___ Md. App. ___, Nos. 2224, 2330, 2580, Sept. Term 2019 & No. 151, Sept. Term 2020 (filed September 3, 2021).

II. CONCLUSION

Because the refusal policy is not a statute, ordinance, administrative rule or regulation, contract, or franchise, Danny Noonan is not entitled to the relief sought under the Declaratory Judgment Act. We hold that the circuit court correctly dismissed the complaint.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
AFFIRMED. COSTS ASSESSED TO
APPELLANT.**