Circuit Court for Prince George's County
Case No: CAL19-05737

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 818

September Term, 2019

JAMERSON TILLMAN

v.

PRINCE GEORGE'S COUNTY POLICE DEPARTMENT

Nazarian,
Gould,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: August 5, 2020

*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.

The present appeal stems from the 2018 denial of a second Maryland Public Information Act ("MPIA") request for the disclosure of records submitted by Jamerson Tillman, appellant, to the Prince George's County Police Department ("the Department"). Mr. Tillman's 2018 request sought, in pertinent part, the "entire investigatory/case file relating to [the Department's] February 2000 investigation and March 10, 2000, arrests of Jamerson Tillman and James Tillman," including "any statement(s) given by Andrew Allen Robinson," and "any statements given, written, or prepared by detectives…related to the March 9, 2000[] arrest of Lyle Kent Wade."

As grounds for its denial of Mr. Tillman's request, the Department advised him in writing that the "request had been satisfied in October 2013." In 2013, the Department provided Mr. Tillman with copies of "the entire investigatory file concerning [Mr. Tillman and his] brother, James Tillman, from January 2000 to April 2000. However, the Department denied Mr. Tillman's request for records related to the prosecution of Andrew Robinson and the arrest of Lyle Kent Wade because Mr. Tillman was not a person in interest pursuant to § 4-351 of the General Provisions Article.[1] The Department's 2018 denial additionally referred Mr. Tillman to its prior 2013 denial letter, asserting that its "position [was] still the same as [it was] in 2013." The Department further referenced Mr. Tillman's prior complaint filed in the Circuit Court for Prince George's County related to the 2013 denial and subsequent appeal to this Court, in which the Department's refusal to disclose records related to the prosecution of Andrew Robinson and arrest of Lyle Kent

[1] Formerly § 10-618(f) of the State Government Article.

Wade was upheld, as Mr. Tillman was not a "person in interest." *Tillman, et al. v. Waddy, et al.*, No. 1577, Sept. Term 2014 (filed: October 8, 2015).

Mr. Tillman filed a complaint in the Circuit Court for Prince George's County challenging the Department's 2018 denial of his MPIA request. In response, the Department filed a "Motion to Dismiss and Granting of Summary Judgment," requesting that the "case be dismissed on the legal theory of Res Judicata." Following a June 2019 motions hearing, the circuit court found that the Department was entitled to "dismissal under res judicata and collateral estoppel" and granted the Department's motion to dismiss.[2]

On appeal, Mr. Tillman presents the following questions for our review, which we rephrase for clarity:

[2] Though the circuit court made an oral ruling at the motions hearing on June 13, 2019, the court failed to comply with Maryland Rule 2-601(a)(1) which mandates that "[e]ach judgment shall be set forth on a separate document." The record does not contain a separate document reflecting that the court granted the Department's motion to dismiss, nor that it dismissed Mr. Tillman's complaint following the hearing. There is, however, a docket entry entered by the clerk on June 26, 2019 which reads: "Hearing on Defendant's Motion to Dismiss and granting summary judgment" and "Motion -Granted."

The separate document requirement may, however, be waived "where a technical application of the separate document requirement would only result in unnecessary delay." *URS Corporation v. Fort Myer Construction Corporation*, 452 Md. 48, 67 (2017). Moreover, strict compliance with the separate document rule can be "waived, at least where ... the trial court intended the docket entries made by the court clerk to be a final judgment and where no party objected to the absence of a separate document after the appeal was noted." *Id.* at 68.

In the present appeal, no party has objected to the absence of a separate document reflecting the court's ruling and the clerk's docket entry accurately sets forth the substance of the court's oral ruling and judgment. Accordingly, we deem the lack of a separate document to be waived.

1. Did the circuit court err in considering res judicata as a defense to an MPIA action for judicial review where the doctrine was not raised in the Department's written denial letter to Mr. Tillman?

2. Did the circuit court err in declining to strike the Department's preliminary motion to dismiss for failure to comply with Maryland Rules 2-322 and 2-323?

3. Did the circuit court err in deciding that the doctrine of res judicata was applicable to MPIA actions generally and Mr. Tillman's action specifically?

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

DISCUSSION

Grounds for Dismissal Not Raised in Pre-Suit Written Denial

On appeal, Mr. Tillman first contends that it was error for the circuit court to consider res judicata as grounds for dismissal where the Department failed to raise the doctrine as a defense in its written denial of his 2018 MPIA request. In support, Mr. Tillman relies on *City of Frederick v. Randall*, 154 Md. App. 543 (2004), for the proposition that this Court has "held that reasons not specified in an MPIA denial letter may not be considered in a trial court or an appellate court." This assertion, however, overstates the Court's holding.

In *Randall*, the City of Frederick argued for the first time on appeal that its refusal to disclose documents in response an MPIA request was justified under two statutory exemptions for disclosure. *Id*. at 575. However, the Court observed that the city had failed to assert these exemptions in its written denial *and* had not asserted these exemptions in the motions court. *Id*. at 575; fn. 10. *Randall* is silent as to whether it would have been

permissible for the city to have raised these exemptions in the motions court despite having failed to do so in its written denial. The case, therefore, is not applicable to the issue here raised by Mr. Tillman.

We do not perceive any error in the court's consideration of res judicata despite its absence as a defense in the Department's 2018 written denial. As Mr. Tillman raises in argument of the remaining issues on appeal, the MPIA is concerned with continuing non-disclosure up to the time of the court's disposition of the matter. In *Blythe v. State*, 161 Md. App. 492, 511 (2005), this Court observed that the denial of an MPIA request does not constitute "a discrete historic event" for litigation in the way that an automobile accident or breach of contract does. On the contrary, the court in evaluating the propriety of non-disclosure of material pursuant to the MPIA, is concerned with the "continuing denial of disclosure up to and including" the date on which the matter is taken up by the court. *Id*. at 511-12. In this light, non-disclosure of materials at the time of the written denial, which "might have been perfectly appropriate then," may become inappropriate at the time of the hearing. *Id*. Such a scenario, however, would not be at all damaging to the disclosure petition at the hearing on which the focus will be on non-disclosure now, not on non-disclosure back then. *Id.*

Just as a change in circumstances may provide the MPIA requestor with new or additional grounds for disclosure up until the matter is decided by the court, we see no reason that the MPIA request denier might not also amend its grounds for denial upon certain triggering circumstances along the "continuum of non-disclosure." In the subject appeal, at the time of the Department's written denial, there was no case pending in the

circuit court. "Res judicata is a common law defense" and its core concern is "with the legal consequences of a final judgment in terms of precluding the subsequent relitigation of the same case." *Smalls v. Maryland State Dep't of Educ., Office of Child Care*, 226 Md. App. 224, 229; 233 (2015). In this light, it was proper for the Department to raise this as a defense when the potential for "subsequent relitigation of the same case" arose. The Department had no reason at the time of its written denial to anticipate that Mr. Tillman would file an action in the circuit court, nor did it have a basis for objecting to a yet unfiled complaint on the grounds of res judicata.

Further, the denial letter implicitly raised the issue that this matter had already been adjudicated by directing Mr. Tillman to his prior MPIA complaint and appeal. It is dubious, therefore, that Mr. Tillman could not have anticipated that the Department might argue that the matter had previously been decided in 2013.

Res Judicata Asserted in Preliminary Motion to Dismiss

"The doctrine of res judicata bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation." *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 106-07 (2005). By restraining parties from litigating the same claim repeatedly, the doctrine "protects the courts, as well as the parties, from the attendant burdens of relitigation" and "ensures that courts do not waste time adjudicating matters which have been decided or could have been decided fully and fairly." *Id.* Implementation of the doctrine additionally "avoids the expense and vexation attending

multiple lawsuits, conserves the judicial resources, and fosters reliance on judicial action by minimizing the possibilities of inconsistent decisions." *Id*. (internal citation omitted).

Mr. Tillman's second contention on appeal is that the court erred by not striking the Department's preliminary motion to dismiss. As support, he contends that Maryland Rule 2-322, which governs the filing of preliminary motions before the filing of an answer in the circuit court, does not specify that res judicata may be raised in a preliminary motion. For this reason, he argues, the court should have stricken the Department's filing as not permitted by rule.

Moreover, Mr. Tillman contends, the Department failed to comply with Maryland Rule 3-323(g), which specifies that res judicata, an affirmative defense, must be raised in an answer to a complaint. He asserts that "failure to adhere to this mandate results in a waiver of that defense." He further cites *Boyd v. Bowen*, 145 Md. App. 635, 654 (2002), for the proposition that "affirmative defenses not included in the answer are deemed waived." Finally, Mr. Tillman contends that he was prejudiced by the Department's motion to dismiss because its assertion of res judicata "unfairly surprised him" and because "he was deprived of his right to conduct discovery."

As contended by Mr. Tillman, we note at the outset that the doctrine of res judicata is not explicitly enumerated as a defense which may be raised in a preliminary motion to dismiss pursuant to Maryland Rule 2-322(a) or (b). Technical discrepancies aside, the Department's motion to dismiss successfully put the court on notice that res judicata was potentially applicable to the case at hand. Put on notice, the court was permitted to consider

res judicata on its own initiative regardless of the efficacy of the Department's motion. As the Supreme Court has noted:

> [I]f a court is on notice that it has previously decided the issue presented, the court may dismiss the action sua sponte, even though the defense has not been raised. The result is fully consistent with the policies underlying res judicata: it is not based solely on the defendant's interest in avoiding the burdens of twice defending a suit, but is also based on the avoidance of unnecessary judicial waste.

Arizona v. California, 530 U.S. 392, 412 (2000).

The Court of Appeals has similarly declared, in considering the defense of res judicata which had not been specially pleaded in an answer, that "in the interests of judicial economy, it may sua sponte invoke res judicata or collateral estoppel to resolve a matter before it." *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 105-06 (2005). Further, Maryland Rule 1-201(a), cited by the circuit court as its grounds for hearing the motion to dismiss, is consistent with the aims of res judicata. It specifies that the Maryland Rules "shall be construed to secure…elimination of unjustifiable expense and delay."

Had the court stricken the Department's motion to dismiss, the result would have necessarily been unnecessary judicial waste. The Department would have certainly renewed its motion to dismiss immediately following or concurrent with the filing of its answer, which would have required the court to again consider the issues raised in the Department's preliminary motion. Moreover, to the extent that res judicata was applicable, any further litigation, including discovery, would have constituted burdensome relitigation. It was therefore, appropriate for the court to consider res judicata at that time, particularly

when the issue had been fully addressed in the Department's motion and Mr. Tillman's opposition thereto.

As to Mr. Tillman's assertion that the Department failed to file an answer asserting res judicata, we note that the filing of a preliminary motion to dismiss under Maryland Rule 2-322 automatically extends the time for filing an answer "to 15 days after entry of the court's order on the motion." See Maryland Rule 2-321(c). The Department, having filed a preliminary motion to dismiss, was under no obligation to file an answer at any point prior to the disposition of the motion by the court. Had the court denied the Department's motion to dismiss, the Department would have been free to raise res judicata as an affirmative defense in its answer.

Applicability of Res Judicata to Mr. Tillman's 2018 MPIA Request

Mr. Tillman's final contention on appeal asserts that the doctrine of res judicata "is inapplicable to MPIA actions" generally and, even if applicable to MPIA actions generally, "is inapplicable to [his] second MPIA action specifically." In support, Mr. Tillman cites *Blythe* for the proposition that an MPIA action "challenges non-disclosure across a continuum" such that each successive MPIA request and denial creates a separate cause of action. *Blythe*, 161 Md. App. at 511-12. Moreover, Mr. Tillman contends that because an MPIA claim asserted at one point in the continuum is not identical to an MPIA asserted at a different point in the continuum, it is impossible to find that separate MPIA claims share the same cause of action for the purpose of satisfying res judicata.

Blythe, however, does not extend as far as Mr. Tillman contends. *Blythe* "note[d] the feeble character of Courts Article, § 5-110 as an effective statute of limitations" for the

purposes of barring an MPIA request. *Id.* The Court in considering the two MPIA requests made by *Blythe* stated:

> A law school professor could easily conjure up a scenario wherein non-disclosure back on August 16, 2000, might have been perfectly appropriate then, but wherein non-disclosure might have become inappropriate as of February 27, 2004. Such a scenario, however, would not be at all damaging to the disclosure petition at the hearing on which the focus will be on non-disclosure now, not on non-disclosure back then.

Id.

Indeed, the grounds for non-disclosure may vary with time such that a subsequent MPIA request, even if requesting the exact same disclosures, may give rise to a new cause of action. In such a case, "[t]he complainant would simply be put to the task of going out and manufacturing a fresh triggering event by making a fresh request for disclosure." *Id.* Because the filing of an MPIA complaint in the courts requires only the "triggering event of a disclosure's having been sought and denied," the court observed that it would be easy for a complainant to circumvent a statute of limitations. *Id.* By illustrating this, the court sought to illustrate how § 5-110's statute of limitations was of "minuscule significance" and could easily be circumvented. *Blythe* does not, however, bar res judicata's applicability to MPIA actions generally. While an MPIA requestor's ability to make successive requests along a continuum may make it easy to navigate around a statute of limitations, it does not similarly make the doctrine of res judicata a virtual nullity.

Considering the applicability of res judicata in the present appeal, Mr. Tillman does not dispute that parties are identical in the first and second suits, nor does he dispute that the court rendered a final judgment on the merits in the first suit. Instead, he asserts that

res judicata is inapplicable because the "first and second suits do not present the same claim or cause of action."

In support, Mr. Tillman asserts that the 2013 and 2018 claims are different because "the first suit challenged PGPD's continued non-disclosure from its October 2013 denial" and that the "second suit, by contrast, challenges PGPD's continued non-disclosure from its August 2018 denial to the present." While it is true that the suits stem from two separate denials, the circumstances attendant to both of the requests and both of the denials are identical. Mr. Tillman does not deny that the documents sought in his 2013 are identical to the documents requested in his 2018 MPIA request. The Department's grounds for denial, that he was not a person in interest, was advanced in both 2013 and 2018. Moreover, the record does not disclose any substantive change that would have affected Mr. Tillman's standing as a person in interest. The factual predicates for Mr. Tillman's 2018 complaint, therefore, would have been substantively identical to the factual predicates of his 2013 complaint.[3]

For the foregoing reasons, we hold that the circuit court did not err in deciding that Mr. Tillman's complaint was barred by the doctrine of res judicata.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[3] Mr. Tillman additionally argues that a 2015 amendment to the MPIA "invalidate[d] PGPD's previous claimed exemption to disclosure." This is inaccurate. The basis of the Department's denial in 2013 was that Mr. Tillman was not a person in interest pursuant to § 4-351 of the General Provisions Article. This portion of the statute has not changed since the Court's 2015 decision upholding the Department's 2013 MPIA denial.