Circuit Court for Prince George's County
Case No. CAL15-09136

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 900

September Term, 2017

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, SITTING AS THE DISTRICT COUNCIL, ET AL.

v.

ZIMMER DEVELOPMENT COMPANY, LLC, ET AL.

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

JJ.

Opinion by Shaw Geter, J.

Filed: June 18, 2018

This case was set in motion after appellees, Zimmer Development Company, LLC, and ZP No. 139, LLC (Zimmer), sought to rezone a parcel of property from R–R (Rural Residential) to L–A–C (Local Activity Zone). The case made its way to the County Council of Prince George's County, sitting as the District Council, who denied the request. Zimmer sought judicial review of the decision in the Circuit Court for Prince George's County, and the circuit court held that the Council erred in denying the request to rezone the property to L–A–C. This Court affirmed, *County Council v. Zimmer (Zimmer I)*, 217 Md. App. 310 (2014), as did the Court of Appeals, *County Council v. Zimmer (Zimmer II)*, 444 Md. 490 (2015).

While the initial case was pending before the Court of Appeals, Zimmer filed the complaint in the present case against Prince George's County and the District Council. Zimmer pled four causes of action: 1) Taking – Inverse Condemnation; 2) Procedural Due Process – Violation of Article 24 of the Maryland Declaration of Rights; 3) Substantive Due Process – Violation of Article 24 of the Maryland Declaration of Rights; and 4) Tortious Interference with Prospective Advantage.

Soon after filing its complaint, Zimmer sought to depose Thomas Dernoga, who had served as a member of the District Council from 2002 through 2010. In response, appellants, Dernoga and the District Council, filed a motion to quash and for a protective order. The circuit court denied the motion, as well as their subsequent motion for reconsideration. Appellants timely appealed and raise the following issues that we have consolidated as follows:

I. Did the circuit court err in denying appellants' motion to quash and motion for reconsideration?

II. Did the circuit court's orders fail to address former Council Member Dernoga's motion to quash and motion for reconsideration?

For the reasons to follow, we affirm the judgments of the circuit court.

BACKGROUND

In 2004, Zimmer, a national real estate developer based in Wilmington, North Carolina, sought to construct a CVS store on a parcel of property in Prince George's County (the Edwards Property). The Property was originally zoned R–R and did not allow for the development of a retail center. As a result, Edwards Commercial Properties submitted an application for a zoning map amendment of the parcel to L–A–C. The District Council adopted a zoning ordinance that same year granting the requested rezoning to the L–A–C zone, subject to a number of conditions.

The L–A–C zone requires three sequential approvals to move forward with the development process: a comprehensive design plan (CDP), a specific design plan (SDP), and a preliminary plan of subdivision (PPS). In March 2011, approximately seven years after the District Council approved the zoning ordinance, Zimmer concurrently filed a CDP and SDP for the development of the Edwards Property. Following a public hearing on the applications, the Planning Board[1] recommended their approval, subject also to various conditions.

[1] The Planning Board is a constituent part of the Maryland–National Capital Park & Planning Commission (MNCPPC), which administers parks, public recreation, and, in conjunction with the governments of Prince George's and Montgomery counties, participates in the planning of development within the Regional District (comprised of

Despite the Planning Board's approval of Zimmer's application, the District Council elected to "call up" the case for review.[2] Following a hearing and oral argument, the District Council issued an order remanding the case to the Planning Board to reconsider three issues. The Planning Board held another public hearing for the express purpose of considering the three remanded issues and again approved the CDP and SDP. The Planning Board issued an amended resolution indicating that it was satisfied with Zimmer's proposed solutions to the three issues on remand.

On September 26, 2011, the District Council exercised its authority to "call up" the case for a second time. Following oral argument, the District Council issued a written opinion reversing the decision of the Planning Board. In its opinion, the Council set forth fourteen specific grounds for denying Zimmer's application. Zimmer filed a petition for judicial review of the Council's decision in the Circuit Court for Prince George's County.

As this Court explained in the previous appeal, the circuit court then held a hearing on the motion and reversed the decision of the District Council:

> The circuit court found that the [District] Council's authority is limited to appellate review of the Planning Board's decisions and that its authority is

most of Prince George's and Montgomery counties). *Zimmer II*, 444 Md. at 699. The MNCPPC is made up of ten members, five of whom are residents of Montgomery County, and five of whom are residents of Prince George's County. *Id.* Each group of five constitute the Planning Board for its respective county. *Id.*

[2] The District Council's authority to "call up" a case is set forth in Prince George's County Code (PGCC) § 27–523(a) and § 27–528.01(b). *See* PGCC § 27–523(a) ("The District Council may vote to review the Planning Board's decision [regarding a Comprehensive Design Plan] on its own motion within (30) days after the date of the notice."); PGCC § 27–528.01(b) ("The District Council may vote to review the Planning Board's decision on a Specific Design Plan on its own motion within thirty (30) days after the date of the notice of the Planning Board's decision.").

> limited to determining whether the Planning Board's decision was arbitrary, capricious, discriminatory, or illegal. As such, the circuit court judge found that the District Council is prohibited from second guessing the Planning Board's judgment, absent a showing that the Planning Board's decision was arbitrary, capricious, discriminatory, or illegal.
>
> The circuit court further found that the District Council was limited in its review to the three remand issues. As a result, the circuit court held that the District Council improperly exceeded the scope of its review. Specifically, the circuit court noted that it was improper for the [District] Council to expand its review in the second call-up to consider new issues outside the scope of remand and that were never even discussed at oral argument.
>
> Finally, the circuit court considered the District Council's fourteen reasons for denying Zimmer's application. The circuit court observed that only two of the fourteen stated reasons for denial were raised in the District Council's initial order of remand. After reviewing each of the fourteen grounds for denying Zimmer's application, the circuit court further observed that none of the District Council's grounds for denial were supported by substantial evidence. As such, the circuit court reversed the decision of the District Council and reinstated the Planning Board's approval of [the CDP and SDP applications].

Zimmer I, 217 Md. App. at 317–18 (quotations and footnote omitted). The District Council noted two appeals before this Court and the Court of Appeals. The primary issues concerned 1) whether the District Council is vested with appellate jurisdiction or original jurisdiction over zoning issues, and 2) whether the District Council exceeded the scope of its authority when it reviewed matters other than the issues identified for remand. Both Courts agreed that the District Council possessed only appellate jurisdiction and that the Council was prohibited from considering issues other than those remanded to the Planning Board. As a result, the Court of Appeals held that "the District Council was required, applying the correct standard of review articulated by each court reviewing this case, to approve the decision of the Planning Board on this record." *Zimmer II*, 444 Md. at 582.

While the initial case was pending before the Court of Appeals, appellees filed a complaint in the Circuit Court for Prince George's County alleging four causes of action: 1) Taking – Inverse Condemnation; 2) Procedural Due Process – Violation of Article 24 of the Maryland Declaration of Rights; 3) Substantive Due Process – Violation of Article 24 of the Maryland Declaration of Rights; and 4) Tortious Interference with Prospective Advantage. The circuit court initially granted appellants' motion to dismiss for failure to state a claim; however, the court reconsidered its ruling and granted appellees' motion to alter or amend.

As the case proceeded through discovery, Zimmer sought to depose third-party witness and former Council Member Thomas Dernoga. The notice also indicated that the deposition "will be recorded by videotape and/or stenographer." Dernoga had served on the council from 2002 through 2010 and participated in adopting the 2004 zoning ordinance that rezoned the Edwards Property from R–R to L–A–C, although he was not a member of the council that denied Zimmer's CDP and SDP applications to commercially develop the Property. Appellants responded by filing a motion to quash and for protective order on the grounds of legislative immunity. The circuit court denied the motion as well as appellants' subsequent motion for reconsideration.

Appellants noted this timely appeal on July 3, 2017, and appellees moved to dismiss the appeal. This Court denied appellees' motion but granted leave to seek the same relief in their brief pursuant to Md. Rule 8-603(c).

STANDARD OF REVIEW

"Appellate courts ordinarily review discovery decisions for abuse of discretion, but the applicability of a privilege is a question of law." *Maryland Bd. of Physicians v. Geier*, 225 Md. App. 114, 143 n.19 (2015); *see also State v. Holton*, 193 Md. App. 322, 329–30 (2010) ("The trial court determined, as a matter of law, that the charges in the indictment against appellee, based upon evidence of her legislative acts, were barred by the common law doctrine of legislative immunity. The court's ruling was based upon a pure question of law; thus, we shall review its decision *de novo."); Schisler v. State*, 394 Md. 519, 535 (2006) ("[W]here an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court's conclusions are 'legally correct' under a *de novo* standard of review."). Consequently, we shall review the denial of appellants' motion to quash and for protective order *de novo*.

DISCUSSION

I. Appealability

Before turning to the merits, we must first address the issue of appealability. Section 12-301 of the Courts and Judicial Proceedings Article defines when a party has the right to appeal an order from a circuit court. It provides: "a party may appeal from a final judgment entered in a civil . . . case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law." Md. Code Ann., Cts. & Jud. Proc. § 12-301 (West 2011). In order to qualify as a final judgment, the judgment "must be so far final as to determine and conclude the rights involved in the action, or to

deny to the party seeking redress by the appeal the means of further prosecuting or defending his rights and interests in the subject matter of the proceeding." *Baltimore City Dep't of Soc. Servs. v. Stein*, 328 Md. 1, 10 (1992).

Although the general rule is that a party may appeal only from a final judgment, *Nnoli v. Nnoli*, 389 Md. 315, 323 (2005), one of the limited exceptions to this rule is the collateral order doctrine. Because appellants argue that the doctrine provides a basis to appeal the circuit court's orders, we shall analyze this argument first.

1. Collateral Order Doctrine

Appellants argue that the appeal is proper under the collateral order doctrine because the position held by former Council Member Dernoga was that of a high level government decision maker, his assertion of legislative privilege is distinct from the merits of the underlying action, and the circuit court's orders are effectively unreviewable on appeal. Appellees, conversely, argue that the case should be dismissed because the circuit court's discovery rulings do not fall within the narrow strictures of the collateral order doctrine; specifically, they argue that the request to depose Dernoga is inextricably intertwined with the merits of the action, it is reviewable on appeal, and, to the extent Dernoga believes that deposition questions call for testimony that is protected by the legislative privilege, he may assert the privilege on a question-by-question basis.

The collateral order doctrine "allows, under extremely limited circumstances, an appeal from a trial court's interlocutory order by a party aggrieved by that order." *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. 75, 85–86 (2006). For the collateral order exception to apply, the order must "(1) conclusively determine the

disputed question; (2) resolve an important issue; (3) resolve an issue that is completely separate from the merits of the action; and (4) would be effectively unreviewable on appeal from a final judgment." *Kurstin v. Bromberg Rosenthal, LLP*, 420 Md. 466, 474 (2011) (citation omitted); *see also In re Foley*, 373 Md. 627, 634 (2003) ("[I]n Maryland the four requirements of the collateral order doctrine are very strictly applied, and appeals under the doctrine may be entertained only in extraordinary circumstances.").

"It is firmly settled in Maryland that, except in one very unusual situation, interlocutory discovery orders do not meet the requirements of the collateral order doctrine and are not appealable under that doctrine." *Cardiac Surgery Assocs.*, 392 Md. at 87. "Most discovery orders do not comply with the third requirement of the collateral order doctrine, as they generally are not completely separate from the merits of the lawsuit." *Id.* Further, "discovery orders fail to meet the collateral order doctrine's fourth element, as they are effectively reviewable on appeal from a final judgment." *Id.* The "singular situation," in which the Court of Appeals "has held that interlocutory discovery orders are appealable under the collateral order doctrine, involves trial court orders permitting the depositions of high level governmental decision makers for the purpose of extensive[ly] probing . . . their individual decisional thought processes." *Id.* at 88 (quotations and citations omitted).

Cases permitting an appeal from a discovery order of a high level governmental decision maker have two important characteristics. First, the government official is a party

to the lawsuit, and second, the individual is a *current* member of the government.[3] For example, in *Pub. Serv. Comm'n v. Patuxent Valley Conservation League*, property owners affected by construction of an overhead electrical transmission line sued the Public Service Commission and alleged that the Commission used improper procedure. 300 Md. 200, 204 (1984). In order to support this claim, the Patuxent Valley Conservation League sought to depose individual members of the Public Service Commission. *Id.* Additionally, in *Montgomery Cty. v. Stevens*, Officer Alan Stevens approached a defendant after his case was dismissed on a motion for judgment and said "[i]f I ever see that kid again, he's mine. If he makes one wrong move, I will shoot him." 337 Md. 471, 473 (1995). An internal investigation soon followed, and the hearing board recommended that Officers Stevens' punishment should be a letter of reprimand. *Id.* at 475. The chief of police did not follow this recommendation, and instead advised Officer Stevens that the penalty would be increased to include two days suspension without pay. *Id.* Stevens brought an action for judicial review and sought to depose the chief, who was named as a defendant, to determine "the mindset" of the chief and discover what he "was thinking when he increased the punishment." *Id.* at 484–85.

In both *Patuxent Valley* and *Stevens*, the courts were concerned that the respective government officials would be subjected to extensive probing of their individual decisional

[3] Though the case did not involve a government official, the District of Columbia Court of Appeals has explained that the rationale in *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949)—the seminal case on the collateral order doctrine—was "never intended to apply to court orders requiring production of information from non-party witnesses." *United States v. Harrod*, 428 A.2d 30, 31–32 (D.C. 1981) (en banc) (footnote omitted).

thought process; further, regardless of the outcome of the trial, the disruption to the administrative process, which is caused by placing the officials under pretrial scrutiny, is incurred at the first instance. As a result, both courts found that the discovery orders were appealable under the collateral order doctrine.

In this case, unlike *Patuxent Valley* and *Stevens*, Dernoga is not a current government official; further, Dernoga is not a party to the ongoing litigation, nor does he have a stake or interest in the merits of the underlying challenge to the denial of Zimmer's zoning applications. As such, the collateral order doctrine does not provide a basis to review the circuit court's discovery orders.

2. Final Judgment Analysis

Our holding that the collateral order doctrine is inapplicable to the circuit court's discovery orders does not end the question of appealability, however. Although the orders were interlocutory with regard to the underlying zoning issue, they were not interlocutory as to former Council Member Dernoga. Two cases, *Baltimore City Dep't of Soc. Servs. v. Stein*, 328 Md. 1 (1992) and *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. 75 (2006) are instructive.

In *Baltimore City Dep't of Soc. Servs. v. Stein*, the tenants of a residential property brought a tort action against their landlord seeking damages for injuries to their child caused by lead paint poisoning. 328 Md. at 3. The defendant sought to depose a non-party, the Baltimore City Department of Social Services, in order to uncover any instances of child abuse or neglect, or matters of psychological or psychiatric problems, which was claimed to be required to have a full opportunity for an adequate defense. *Id.* at 5. The

Department filed a motion for protective order, and the circuit court granted the motion. *Id.* at 7. The Court of Appeals noted that Maryland has declined to follow the rule that would have required the Department to refuse compliance with the court's order, and be held in contempt, in order to challenge the adverse order on appeal. *Id.* at 16–17. Rather, in holding that the Department could appeal the discovery order, the Court stated:

> With regard to the appellant and the appellee, the ruling has all of the attributes of finality recognized by this Court: it settles the rights of the appellant and the appellee in the records sought to be discovered. . . . The discovery order in this case determined and concluded the appellant's rights and interests in the discovery issue and denied it the means of further prosecuting or defending them.

Id. at 13 (citations omitted). In *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, Cardiac Surgery Associates filed an action against MidAtlantic Cardiovascular Associates, alleging unfair competition and tortious interference with economic relations in connection with the parties' cardiac surgery practices. 392 Md. at 80. Both parties employed cardiac surgeons who practiced at St. Joseph Medical Center. *Id.* And both sides sought discovery from St. Joseph—who was not a party to the lawsuit—by serving upon the hospital notices of deposition and subpoenas *duces tecum*. *Id.* St. Joseph produced a number of documents but also produced a privilege log, identifying those documents it would not produce because, according to St. Joseph, they were covered by various privileges, including the medical review committee privilege. *Id.* When St. Joseph later learned that the parties had exchanged some of the documents that were listed in its privilege log during discovery, St. Joseph demanded the immediate return of the documents. *Id.* at 80–81. The parties

refused, and the hospital filed a motion for a protective order. *Id.* at 81. The circuit court granted the motion in part and denied it in part; St. Joseph appealed. *Id.* at 81–82.

Like this case, the Court of Appeals found that the collateral order doctrine did not apply. *Id.* at 85. It explained, however, that "[a]lthough the discovery order was interlocutory with regard to the underlying unfair competition litigation and the parties to that case, the order was not interlocutory with regard to St. Joseph." *Id.* at 88. Importantly, the Court noted that "St. Joseph is not a party to the unfair competition case and would have no standing to challenge the discovery order by appealing from a final judgment in that case." *Id.* The Court also cited *Stein* and found that the circuit court's order was a final, appealable judgment by St. Joseph, reasoning:

> In situations where the aggrieved appellant, challenging a trial court discovery or similar order, is not a party to the underlying litigation in the trial court, or where there is no underlying action in the trial court but may be an underlying administrative or investigatory proceeding, Maryland law permits the aggrieved appellant to appeal the order because, analytically, it is a final judgment with respect to that appellant.

Id. at 90. Here, appellees argue that the appeal should be dismissed because there is not yet a final, appealable judgment that has been entered. Appellants, conversely, cite *St. Joseph Med. Ctr., Inc. v. Cardiac Surgery Assocs., P.A.*, and argue that the appeal is permissible because it is a final judgment as to former Council Member Dernoga.

We agree with appellants. The only proceeding in which Dernoga is a party is the motion to quash and for protective order. Like the court in *Cardiac Surgery Assocs.*, we hold that the circuit court's orders denying appellants' motions "finally terminated that proceeding adversely to [Dernoga]. Analytically, and under our cases, the order[s were]

final as to [Dernoga] and [were] appealable by [Dernoga] as a final judgment." 392 Md. at 88–89.

II. Merits

The primary question we must answer is whether former Council Member Dernoga may assert the legislative privilege against being deposed. Members of Congress and members of the Maryland General Assembly have Constitutional immunity from a request to defend their conduct in legislative proceedings. *See* U.S. Const. art. I, § 6 ("[F]or any Speech or Debate in either House [Senators and Representatives] shall not be questioned in any other Place."). The Maryland Constitution provides a similar protection. *See* Md. Const., Declaration of Rights, art. 10 ("[F]reedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature."); *see also* Md. Const. art. III, § 18 ("No Senator or Delegate shall be liable in any civil action, or criminal prosecution, whatever, for words spoken in debate.").

Members of local legislative bodies in Maryland, like the District Council, do not fall under the umbrella of State or Federal Constitutional immunity provisions, "which apply only to the members of legislative bodies mentioned within them." *Montgomery County v. Schooley*, 97 Md. App. 107, 114 (1993). However, the doctrine articulated in those provisions has "been regarded as applicable to members of local and regional legislative bodies (as well as to State legislatures, in addition to any specific State Constitutional provision) as a matter of common law—the common law doctrine of official immunity." *Id.* at 114–15 (quotations and citation omitted).

"The purpose of this immunity is to insure that the legislative function may be performed independently without fear of outside interference." *Id.* at 116 (citing *Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731 (1980)). Courts have construed the privilege as protecting a legislator against both the consequences of litigation and the burden of defending oneself in a court proceeding, which has resulted in the privilege "being regarded as both a bar to proceedings seeking to establish liability against the legislator and as a *testimonial privilege*." *Id.* One who properly invokes legislative immunity can, therefore, "invoke a legislative privilege not to testify. On the other hand, it would seem to be equally clear that legislative immunity or privilege can *only* be asserted by the officer who possesses it, and not by others." *O'Hara v. Kovens*, 92 Md. App. 9, 19–20 (1992) (citations omitted).

Where the privilege is properly asserted, a party is barred from inquiring into the motives of the legislator. *See Maryland Dep't of Env't v. Days Cove Reclamation, Co.*, 200 Md. App. 256, 270 (2011) (citation omitted) ("It is well-settled that when the judiciary reviews a statute or other governmental enactment, either for validity or to determine the legal effect of the enactment in a particular situation, the judiciary is ordinarily not concerned with whatever may have motivated the legislative body or other governmental actor."); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986) (citation omitted) ("What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork.").

Legislative actions protected by the privilege are not limited to debates on the council floor or voting on legislation. *See Schooley*, 97 Md. App. at 123 ("[T]he legislative process, for purposes of the privilege, includes more than just proceedings at regularly scheduled meetings of a legislative body. If it includes a meeting with citizens or private interest groups, it must also include caucuses and meetings with political officials called to discuss pending or proposed legislation."); *see also A Helping Hand, LLC v. Baltimore County*, 295 F. Supp. 2d 585, 591 (D. Md. 2003) ("[P]ublic statements about legislative matters would appear to be an ordinary function of representative government and therefore a matter covered by legislators' testimonial privilege.").

On the other hand, the cases also make clear "that everything a Member of Congress may regularly do is not a legislative act within the protection of the Speech or Debate Clause." *Manders v. Brown*, 101 Md. App. 191, 206 (1994) (quoting *Doe v. McMillan*, 412 U.S. 306, 313 (1973)). For example, when "a Member of Congress interacts with the Executive Branch or an administrative agency—they may cajole, and exhort with respect to the administration of a federal statute—but such conduct, though generally done, is not protected legislative activity." *Id.* (quotations and citation omitted). The pertinent question, therefore, is "whether the person asserting immunity was 'performing acts legislative in nature.'" *Id.* at 207 (quotations and citation omitted).

Appellants argue that the "doctrine of legislative testimonial privilege protects Mr. Dernoga from being deposed regarding his own or other Council Members' legislative actions." Appellants note that rezoning is a legislative action under Maryland law. Further, it is undisputed that Dernoga was a local legislator as a member of Prince George's County

Council from 2002 to 2010 and that he "did not participate in any capacity in the actions that give rise to this lawsuit," which is the District Council's denial of Zimmer's 2012 zoning applications. As a result, in light of the issues being litigated, Dernoga does not have any personal knowledge relevant to this litigation. Finally, appellants maintain that "even if former Council Member Dernoga were in possession of any non-privileged information about his own or other legislators' motives, Zimmer can claim no legal authority to discover such information because an individual legislator's motives are not relevant."

Appellees respond that the legislative privilege is not absolute and thus a legislator, or a former county councilmember, is not entitled to automatically quash a subpoena for a deposition. The privilege, appellees contend, applies only to communications and actions by an active legislator, acting in his or her official capacity, in regard to matters that are legislative in nature. From this, appellees argue that former Council Member Dernoga's knowledge, communications, and actions taken outside of his official capacity as a councilmember, or as to matters that were not legislative in nature, would not be privileged. Further, his knowledge, involvement, and association with the District Council's actions after he left office in 2010 are also discoverable. Finally, Dernoga can assert the privilege on a question-by-question basis and may seek a protective order after the deposition if he deems necessary.

As indicated above, the primary question in determining whether the circuit court erred in denying appellants' motion to quash is to identify whether some, part, or all of the actions former Council Member Dernoga performed were "legislative in nature." There is

no dispute that any actions in connection with granting the 2004 zoning ordinance are legislative in nature and thus not discoverable.

The question then becomes whether any actions by Dernoga outside of the 2004 ordinance could also be considered legislative in nature. We note that the amended complaint alleges that there were improper motives for the District Council's denial of Zimmer's CDP and SDP applications. While it is true that Zimmer would be precluded from any attempt to discover information about the legislators' motives in denying the applications, former Council Member Dernoga, as appellants readily point out, "did not participate in any capacity" in "the District Council's denial of [Zimmer's] Plan Applications in 2012." Accordingly, if it turns out that Dernoga somehow tainted the Council's thinking to deny the applications, this action cannot be legislative in nature. Further, contrary to appellants' assertion, Dernoga may not assert the privilege on behalf of other legislators. *See Kovens*, 92 Md. App. at 20 ("[L]egislative immunity or privilege can *only* be asserted by the officer who possesses it, and not by others.").

Our holding on this issue is narrow, as the deposition has yet to occur and Zimmer (as is their right) has not proffered what any of the questions would be. Nevertheless, former Council Member Dernoga has no right to assert the legislative privilege as to the District Council's denial of Zimmer's Plan Applications in 2012, and, for this reason, the circuit court did not err in denying appellants' motion to quash.[4]

[4] Nor are we persuaded by appellants' two alternative arguments. First, that the circuit court may have granted a similar motion in another case is not binding on this Court. Second, appellants' assertion that the deposition was noted for the purpose of harassing

III. Former Council Member Dernoga's Motions

The final issue raised by appellants is that Zimmer did not oppose former Council Member Dernoga's motion to quash or motion for reconsideration; therefore, the motions should have been granted. Appellees respond that the District Council and Dernoga filed one motion, and the circuit court denied this motion. Further, appellants filed one motion for reconsideration, which appellees also opposed and the circuit court denied.

We agree with appellees. The docket entries reflect that the District Council and Dernoga filed a single motion to quash and for a protective order. Appellees responded with an "Opposition to Defendant's Motion to Quash and for Protective Order," and requested that the circuit court deny the "motion." Although former Council Member Dernoga is not a defendant, we are satisfied that appellees reference to the "motion" was sufficient to oppose Dernoga's motion to quash, as well as his motion for reconsideration. For the same reasons, we are satisfied that the circuit court's references to the "motion" sufficed to enter judgment on both of Dernoga's motions.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.

former Council Member Dernoga's current political campaign is not relevant to this appeal because the legislative privilege does not apply to political campaigns.