

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0908

September Term, 2013

ANGELA SEMENCHENKO

v.

MARYLAND STATE HIGHWAY
ADMINISTRATION, ET AL.

Graeff,
Kehoe,
Alpert, Paul E.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: July 9, 2015

*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.

Angela Semenchenko, appellant, an unrepresented litigant, appeals from the orders of the Circuit Court for Cecil County dismissing her complaint seeking declaratory relief against the following defendants: the State Highway Administration, the Maryland State Police, the Maryland Insurance Commissioner/Maryland Insurance Administration, Elephant Insurance Company, and Independent Insurance Agents of Maryland, Inc., collectively, “appellees.” On appeal, Ms. Semenchenko raises the following question for our review:

Did the circuit court abuse its discretion when it granted appellees’ motions to dismiss Ms. Semenchenko’s complaint on the ground that declaratory relief was inappropriate?

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

FACTUAL AND PROCEDURAL BACKGROUND

On August 22, 2012, at 7:45 a.m., Ms. Semenchenko was involved in a motor vehicle accident on North East Road (Maryland Route 272) and Tiger Drive in Cecil County. Ms. Semenchenko was 17 years old at the time of the accident, and she was driving a vehicle owned by her parents, Vitaliy and Nadia Semenchenko.

The Maryland State Police issued an accident report, stating that Ms. Semenchenko failed to yield the right-of-way to oncoming traffic as she attempted to turn left onto southbound Route 272 from Tiger Drive, pulling in front of a vehicle (“vehicle two”) traveling northbound on Route 272. Ms. Semenchenko also failed to obey the traffic control device at the intersection. Vehicle two, unable to avoid Ms. Semenchenko’s vehicle, collided with her vehicle. As a result of the collision, vehicle two struck a curb and overturned. Ms. Semenchenko’s vehicle traveled off the roadway and struck the power box of the traffic

control lights for the intersection, disabling the lights. The Maryland State Police found Ms. Semenchenko to be at fault for the accident.

On December 3, 2012, the State Highway Administration sent Mr. and Mrs. Semenchenko an invoice in the amount of \$16,633.58 for the repair and replacement of the traffic signal equipment that was damaged in the accident. The invoice indicated that Mr. and Mrs. Semenchenko should submit it to their insurance company and notified them that payment was due by January 3, 2013. On January 17, 2013, the State Highway Administration sent follow-up correspondence to Mr. Semenchenko. The letter notified Mr. Semenchenko that he had 90 days from the date of the original invoice to pay the invoice or the account would be delinquent.

On January 28, 2013, Ms. Semenchenko filed a “Complaint for Declaratory and Injunctive Relief and a Preliminary Injunction” against the State Highway Administration, the Maryland State Police, the Maryland Insurance Commissioner/Maryland Insurance Administration, Elephant Insurance Company, and Independent Insurance Agents of Maryland, Inc. The complaint alleged that the police report finding her to be the cause of the accident was “completely false,” and a justiciable controversy was presented because “legal liabilities are now arising.”

In the “FACTS” section of the complaint, Ms. Semenchenko alleged that she approached the light at the intersection of Tiger Drive and Maryland Route 272 and “saw a flashing yellow light.” She was not certain which way to turn because she “was unfamiliar

with that part of Rising Sun.” The intersection “was complicated,” and the “road was thick with traffic.” She decided to turn left, looked both ways, and when she looked to the left again, she “saw a reddish brown cabbed dump truck” – vehicle two – “coming straight” at her. Ms. Semenchenko covered her head with her arms and then heard the sound of an impact. The next thing she knew, her vehicle stopped at the traffic light control box. Ms. Semenchenko was flown to the University of Maryland Shock Trauma Center.

Ms. Semenchenko summarized an affidavit of Sara Willis, whom Ms. Semenchenko asserted witnessed the accident, but who was not interviewed by the police.¹ According to Ms. Semenchenko’s summary, Ms. Willis observed a flashing yellow light at the intersection and a truck driving through the intersection without slowing down or applying brakes. Ms. Semenchenko’s vehicle was “standing still” at the intersection waiting for the truck to pass, but the truck crossed “over the solid white line” indicating the travel lane, struck Ms. Semenchenko’s vehicle, and dragged her vehicle into the traffic light control box. After the police arrived, Ms. Willis was told to wait so she could tell them what she saw. Ms. Willis waited for more than an hour, but she had to leave before speaking to police because she had “school and other commitments.”

In Count I, Ms. Semenchenko sought a “declaratory judgment that I did not cause the accident,” based on the assertions in Ms. Willis’s affidavit. In Count II, Ms. Semenchenko

¹ Ms. Semenchenko does not include the affidavit in her record extract.

sought a “Declaratory Judgment to Invalidate Maryland’s Repair or Other Charges,” asserting again that the police report was incorrect and that “Maryland failed to have the light work properly” because the light “should not have been flashing ‘caution’, but rather should have reverted to presenting red lights for stops and green lights for goes.” In Count III, Ms. Semenchenko sought to “Enjoin[] Maryland from Collecting from Me” based on the failure of the police report to include the statement of the only eyewitness, Ms. Willis, who saw the “accident as it unfolded,” and that Ms. Semenchenko would suffer great harm by having to “pay huge sums of money [she did] not have for damages that” she did not cause. In Count IV, Ms. Semenchenko asked the court to declare that “Maryland is responsible for the Accident” because the “flashing yellow light should have been set to red, yellow and green operation to regulate traffic at the intersection and in particular, to slow down the truck that smashed into my minivan.” In Count V, Ms. Semenchenko sought a “declaratory judgment that the truck driver is at fault for the accident” because the driver of vehicle two did “not slow down,” “crossed over solid white lines,” and “slammed into [her] minivan causing the accident.”

Each of the defendants filed a motion to dismiss Ms. Semenchenko’s complaint. The Maryland Insurance Commissioner/Maryland Insurance Administration asserted that the complaint failed to state a claim upon which relief could be granted and was not statutorily authorized. The State Highway Administration asserted that Ms. Semenchenko failed to comply with the Maryland Tort Claims Act, that a declaratory judgment by a prospective tort

defendant is disfavored, and that Ms. Semenchenko failed to join the driver of vehicle two, a necessary party.² Independent Insurance Agents of Maryland, Inc. asserted that the complaint failed to state a claim against it upon which relief could be granted, and that it was mistakenly named as vehicle two's automobile insurance carrier, despite that it does not sell or provide automobile coverage to drivers.³ The Maryland State Police asserted that sovereign immunity barred the complaint, that Ms. Semenchenko failed to state a claim for which relief could be granted, that she failed to name the proper party,⁴ and that she inappropriately sought relief for a tort claim through an action for declaratory judgment. It also noted that count two of the complaint sought to enjoin the State of Maryland from proceeding with a collection action against her parents, who were not parties to the action. Elephant Insurance Company asserted that the complaint failed to state a cause of action against it and did not request any relief from it.

On June 11, 2013, the court held a hearing on the motions. After appellees made their arguments, the court heard from Ms. Semenchenko. She argued, in essence, that Ms. Willis's affidavit, along with the "deficient police report that is incomplete and inaccurate," required

² The State Highway Administration requested, in the alternative, that the court grant summary judgment in its favor.

³ Independent Insurance Agents of Maryland, Inc. requested, in the alternative, that the court grant summary judgment in its favor.

⁴ Ms. Semenchenko named "Maryland State Police Legal Counsel" and "Maryland State Police Northeast Legal" as defendants.

the court to declare that she was not at fault. She stated that she included all of the named defendants in order to make “everyone a party who has an interest which would be affected by the declaration of the court.”

The court ruled as follows:

The relief that you are seeking, declaratory relief, is not available to you for . . . the wrongs that you allege. Your parents are not parties to the case. This case might stand for tort relie[f], that is negligence, but not for declaratory judgment.

So you’re out of court on declaratory judgment, and I’m going to grant the motions to dismiss with regard to all defendants named in the case.

PARTIES’ CONTENTIONS

Ms. Semenchenko argues that the circuit court abused its discretion in granting appellees’ motions to dismiss. She asserts that the action was brought “to simply, efficiently, and amicably resolve the contents of the police report.” She explains that she filed an action for declaratory judgment, as opposed to an action in tort, because “the tort action had not yet accrued.” She argues that the court’s dismissal “quashes a young woman’s dissent when the government is caught in serious wrongdoing, even criminal misconduct across several agencies of the Maryland government.”

Appellees State Highway Administration, Maryland State Police, and Maryland Insurance Commissioner/Maryland Insurance Administration (the “State Agency defendants”), as well as the Elephant Insurance Company, argue that the circuit court properly exercised its discretion to dismiss the complaint because a declaratory judgment was

not the proper remedy here. They assert, among other things, that the claims would more effectively and efficiently be resolved in a tort action, that Ms. Semenchenko had another statutory remedy to resolve her concern about the accident report, *see* Md. Code (2012 Supp.) § 10-625(b) of the State Government Article (“SG”),⁵ and that Ms. Semenchenko did not have standing in the courts regarding the repair bill because the invoice for repairs to the damaged traffic signal was not directed to her, but to her parents, the owners of the vehicle.

Independent Insurance Agents of Maryland, Inc. asserts that it “has nothing to do with Semenchenko’s claim or any [of] the relief that she seeks.” It asserts that Ms. Semenchenko’s allegation in her complaint that it “is the other driver’s insurance company who must be part of this declaratory judgment action to provide input as to how its company relies or does not rely on police reports to make its disbursements” is “patently false,” stating that it is not an insurance agency, does not provide coverage to individuals, and is not the insurer of the driver of vehicle two.

DISCUSSION

The Maryland Uniform Declaratory Judgments Act, Md. Code (2013 Repl. Vol.) § 3-409(a) of the Courts and Judicial Proceedings Article (“CJP”) provides that “a court may grant a declaratory judgment or decree in a civil case, if it will serve to terminate the

⁵ Maryland Code (2012 Supp.) § 10-625(b) of the State Government Article, recodified as Md. Code (2014) § 4-502 of the General Provisions Article, provides that a person in interest may request a unit of government to correct inaccurate or incomplete information in a public record by doing so in writing.

uncertainty or controversy giving rise to the proceeding.” It is within the court’s discretion, however, “to refuse a declaratory judgment ‘when it does not serve a useful purpose or terminate controversy.’” *Polakoff v. Hampton*, 148 Md. App. 13, 27 (2002) (quoting *Grimm v. County Comm’rs*, 252 Md. 626, 632 (1969)), *cert. denied*, 373 Md. 408 (2003).

Factors that weigh in favor of not exercising discretion to hear a declaratory judgment by a putative defendant against a prospective tort plaintiff include “whether the proceeding will terminate the controversy between the parties or will otherwise settle or clarify their conflicting legal positions; whether going forward with the declaratory judgment case will negatively affect the rights of any party,” and “whether the parties’ controversy can be more effectively and efficiently decided by the alternate remedy of a common-law tort action.” *Id.* at 37. Additionally, this Court has stated that a court should refuse to order declaratory relief where a proceeding is already pending in another tribunal, “where a special statutory remedy has been provided, or where another remedy will be more effective or appropriate under the circumstances,” noting that, in these situations, “‘it is neither useful nor proper to issue the declaration.’” *Vargas-Aguila v. State, Office of Chief Medical Examiner*, 202 Md. App. 375, 382 (2011) (quoting *Haynie v. Gold Bond Bldg. Prods*, 306 Md. 644, 651 (1986)).

Here, two factors weigh heavily in support of the circuit court’s decision to dismiss the complaint. First, the controversy “can be most effectively and efficiently resolved in a traditional tort case in which all the claims and all the defenses—and all the evidence necessary to their determination—can be presented and decided together.” *Polakoff*, 148 Md.

App. at 38. Although “a prospective tort defendant is not prohibited from bringing a declaratory judgment act defensively to establish nonliability, the practice is disfavored.” *Id.* at 33.

Second, going forward with the declaratory judgment action would negatively affect the rights of the driver of vehicle two, who was not even named as a party to the suit. The failure to name the driver of vehicle two and Ms. Semenchenko’s parents, the persons being charged with the repairs, by itself justified the decision to dismiss the complaint. *See Williams v. Moore*, 215 Md. 181, 185 (1957) (failure to join persons affected by the declaration is fatal). Given these factors, the circuit court did not abuse its discretion in dismissing Ms. Semenchenko’s complaint.

**JUDGMENT AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**