IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2018

No. 2861

THE ESTATE OF KATHERINE SARAH MORRIS, *et al.*,

Appellant,

v.

STATE OF MARYLAND,

Appellee.

On Appeal from the Circuit Court for Anne Arundel County
(Mark W. Crooks, Judge)

BRIEF OF APPELLEE

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TABLE OF CONTENTS

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BRIEF OF APPELLEE

STATEMENT OF THE CASE

Marguerite R. Morris filed a complaint for writ of mandamus on behalf of herself and the Estate of Katherine Sarah Morris, her daughter, pursuant to Maryland Rule 15-701. (E. 21-175.)[1] Specifically, Ms. Morris sought to have the autopsy report for Katherine

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[1] For ease of reference, Appellees will refer to Marguerite Morris as "Ms. Morris" and her daughter, Katherine Sarah Morris, as "Katherine Morris."

Morris amended so as to change the manner of death from "suicide" to "undetermined." (E. 21, 173-74.)

When Ms. Morris filed her complaint, it was the second time she had asked the circuit court to consider a complaint for writ of mandamus in an effort to obtain an order compelling the Office of the Chief Medical Examiner to amend the manner of death for Katherine Morris. (Apx. 1-147.)

Ms. Morris' first complaint has been litigated and dismissed with prejudice. (E. 295-97, 317.) Because this was Ms. Morris' second attempt to bring this lawsuit, the State of Maryland ("State") moved to dismiss her complaint on the same grounds as it had in the first lawsuit, but also included an argument that her claim was barred by the doctrine of res judicata. (E. 207-09.)

The Circuit Court for Anne Arundel County granted the motion to dismiss without providing a basis for the dismissal and dismissed the case with prejudice. (E. 180.) Ms. Morris noticed a timely appeal. (E. 202-03.)

QUESTIONS PRESENTED

1. Is Ms. Morris' claim barred by res judicata where the parties in the present litigation are the same or in privity with the parties to an earlier action, the claim in the current action is identical to the one determined in prior litigation, and there was a final judgment on the merits in a previous action?

2. Did the circuit court otherwise correctly dismiss Ms. Morris' complaint?

STATEMENT OF FACTS

Summary of Circumstances Surrounding Katherine Morris' Death

On May 5, 2012, Katherine Morris parked her car in the parking lot at the Arundel Mills Mall. (E. 24, 151.) After she parked her car, she lit charcoal grills in her vehicle, which ultimately resulted in her death. (E. 24.) Specifically, the Office of the Chief Medical Examiner determined that the cause of death was carbon monoxide poisoning and the manner of death was suicide. (E. 37.)

Ms. Morris alleges that the investigations by law enforcement and the Office of the Chief Medical Examiner were replete with error and corruption. (E. 37-173.) Ms. Morris has laid out, in great detail, the facts that she alleges support her contention that her daughter was a victim of homicide, rather than of suicide. (E. 32-37.) The basis for this allegation is that (1) her daughter married a member of the military ("Mr. Goodwin") who collected Basic Allowance for Housing without sending any money to his wife; (2) Mr. Goodwin collected $100,000 in life insurance from a policy that did not exclude suicide; (3) Mr. Goodwin had been cheating on Katherine Morris; and (4) Katherine Morris threatened to report Mr. Goodwin to the Office of the Inspector General within 24 hours before her death. *Id.* Ms. Morris argues that these facts, collectively, should have prompted a more thorough investigation. (E. 32-37.)

Ms. Morris' First Attempt to Amend the Death Certificate for Katherine Morris

On March 14, 2018, Ms. Morris filed a lawsuit in the Circuit Court for Anne Arundel County (the "First Lawsuit"), which sought identical relief to the lawsuit in the underlying

case. (Apx. 1-147.) In the First Lawsuit, Ms. Morris initially sued Dr. David Fowler, the Chief Medical Examiner for the Office of the Chief Medical Examiner, which is an agency of the State of Maryland. Md. Code Ann., Health-Gen. § 5-309 (LexisNexis 2015); COMAR 10.35.01.01-.21. The First Lawsuit sought a writ of mandamus that would have, among other things, compelled Dr. Fowler to change Katherine Morris's manner of death from "suicide" to "undetermined." (Apx. 3, 142, 143, 144, 146, 147.)

Dr. Fowler filed a motion to dismiss the First Lawsuit. That motion had several bases for dismissal, including: there was no final administrative decision for review in the circuit court, plaintiffs failed to exhaust administrative remedies prior to filing the circuit court, there was no claim for a writ of mandamus because there was a separate statutory avenue for plaintiffs to seek the requested relief, and any potential claim was barred by the applicable statute of limitations and/or laches. (E. 295-312.) On May 9, 2018, Ms. Morris filed an opposition. (E. 313-16.)

Also on May 9, 2018, Ms. Morris filed a motion for leave to amend, which included a copy of her amended complaint and a redlined amended complaint. (E. 279-83) (Apx. 148-436.) The amended complaint added the "State of Maryland, Office of the Chief Medical Examiner" as a defendant. (E. 280-81) (Apx. 148, 291.)

On or about June 6, 2018, the Circuit Court for Anne Arundel County granted the motion to dismiss and ordered that the plaintiffs' complaint be dismissed with prejudice. (E. 317.) On June 15, 2018, plaintiffs filed a motion to alter or amend the judgment and/or for reconsideration. (Apx. 437-449.) On July 27, 2018, after the motion was fully briefed, the motion was denied. (E. 285-94.) The First Lawsuit was never appealed to this Court.

In this case, the plaintiffs filed a complaint solely against the State of Maryland (hereinafter, the "Second Lawsuit"). The Second Lawsuit sought the same relief as the First Lawsuit: to have the autopsy report for Katherine Morris amended so as to change the manner of death from "suicide" to "undetermined." (E. 21, 173-74.)

ARGUMENT

I. THIS COURT REVIEWS THE DECISION OF THE CIRCUIT COURT TO DETERMINE IF IT IS LEGALLY CORRECT.

"Upon appellate review, the trial court's decision to grant such a motion [to dismiss a complaint for failure to state a claim upon which relief may be granted] is analyzed to determine whether the court was legally correct. Dismissal should only be upheld if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff." *McHale v. DCW Dutchship Island, LLC*, 415 Md. 145, 156 (2010) (internal quotations and citations omitted). The trial court is typically limited to the four corners of the complaint to determine whether "[t]he well-pleaded facts setting forth the cause of action [are] pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice." *RRC Ne., LLC v. BAA Md., Inc.*, 413 Md. 638, 643-44 (2010) (internal citations omitted).

This Court may affirm the dismissal on any basis shown by the record. Md. Rule 8-131(a); *see also Robeson v. State*, 285 Md. 498, 502 (1979) (holding that "where the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties, an appellate court will affirm."). In determining whether Ms. Morris' claims are

barred by the doctrine of res judicata, the Court reviews the matter de novo. *Smalls v. Maryland State Dep't of Educ.*, 226 Md. App. 224, 252 (2015).

II. MS. MORRIS' CLAIMS ARE BARRED BY THE DOCTRINE OF RES JUDICATA AND THIS COURT SHOULD AFFIRM THE DECISION BELOW ON THIS BASIS.

"Res judicata, also known as claim preclusion or direct estoppel, means 'a thing adjudicated.'" *Anne Arundel County Bd. of Educ. v. Norville*, 390 Md. 93, 106 (2005). "In Maryland, the doctrine of res judicata precludes the relitigation of a suit if (1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is identical to the one determined in the prior adjudication; and (3) there was a final judgment on the merits in the previous action." *Powell v. Breslin*, 430 Md. 52, 63-64 (2013). "Res judicata restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or *could have been* decided fully and fairly." *Norville*, 390 Md. at 107 (emphasis in original). All of the claims asserted in this lawsuit were or could have been litigated in the First Lawsuit described above. Accordingly, the decision of the circuit court should be affirmed.

A. The Parties in the Present Litigation Are the Same or in Privity with the Parties in the First Lawsuit.

The First Lawsuit and the Second Lawsuit each have the same plaintiffs. In the First Lawsuit, the plaintiffs sued Dr. Fowler in his official capacity. (Apx. 3, 4.) Before dismissal, the plaintiffs sought to amend and add the "State of Maryland, Office of the Chief Medical Examiner" as a defendant. (Apx. 148, 291.) This would have been a distinction without a difference. Dr. Fowler in his official capacity, the Office of the Chief

Medical Examiner, and the State of Maryland are not three distinctly "sue-able" entities. Holding a unit of the State responsible is the same as holding the sovereign power answerable, and as such, two units of the State are not two separate entities for purposes of suit. *Baltimore Police Dep't v. Cherkes*, 140 Md. App. 282, 306-07 (2001); *Board of Educ. v. Town of Riverdale*, 320 Md. 384, 388-89 (1990). Indeed, it is well established that "[a] decision for or against one political subdivision or agency of a government binds other political subdivisions or agencies of the same government" for purposes of res judicata. 46 Am. Jur. 2d Judgments § 602; *see also Washington Suburban Sanitary Comm'n v. TKU Assocs.*, 281 Md. 1, 19-20 (1977) (recognizing that where separate cases are handled by representatives of the same government, the requirement of party privity is met for purposes of res judicata).

The decision to only sue the State of Maryland in the Second Lawsuit is the same as suing Dr. Fowler in his official capacity in the First Lawsuit. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) (holding that "a suit against the official's office" is "no different from a suit against the State itself"). This is not to mention that the court in the First Lawsuit was in receipt of Ms. Morris' motion for leave to amend the complaint and add the State of Maryland as a party prior to dismissing the First Lawsuit. Accordingly, the First Lawsuit and the Second Lawsuit involve the same parties for purposes of res judicata.

B. The Claims in This Lawsuit Were or Could Have Been Included in the First Lawsuit.

In the First Lawsuit, Ms. Morris sought to have the autopsy report for Katherine Morris amended so as to change the manner of death from "suicide" to "undetermined." (Apx. 3, 142, 143, 144, 146, 147.) In the Second Lawsuit, Ms. Morris also seeks to have the autopsy report for Katherine Morris amended so as to change the manner of death from "suicide" to "undetermined." (E. 21, 173-73.) The two cases seek identical relief from the same parties.

C. There Has Been a Final Judgment on the Merits.

The Circuit Court for Anne Arundel County considered a motion to dismiss in the First Lawsuit. (E. 295-312.) The bases raised for dismissal all amounted to failure to state a claim. (E. 295-312.) After considering that motion, the circuit court dismissed the First Lawsuit with prejudice. (E. 317.) Then, after the First Lawsuit was dismissed, Ms. Morris filed a motion to alter or amend judgment and/or for reconsideration. (Apx. 437-449.) The circuit court considered the motion and denied it. (E. 285-94.) The circuit court's denial of the First Lawsuit on the ground of failure to state a claim was a decision on the merits for purposes of res judicata. *Norville,* 390 Md. at 113-14; *see also Bell v. Hood*, 327 U.S. 678, 682 (1946) (noting that "it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for want of jurisdiction").

It is for these reasons that the circuit court correctly dismissed this case with prejudice.

III. THE CIRCUIT COURT CORRECTLY DISMISSED THE COMPLAINT BECAUSE IT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

The complaint fails for a number of additional reasons, all of which amount to a failure to state a claim upon which relief can be granted. The complaint fails to state a claim because (1) there was a separate statutory avenue through which Ms. Morris could have sought the requested relief if she had acted timely; (2) Ms. Morris failed to exhaust administrative remedies prior to filing the circuit court; (3) there was no final administrative decision for review in the circuit court; and (4) her claim is barred by the applicable statute of limitations and/or laches.

A. There Was A Separate Statutory Avenue to Seek the Requested Relief.

Ms. Morris brings this lawsuit for a writ of mandamus pursuant to Maryland Rule 15-701. A writ of mandamus under Rule 15-701 is "'generally used to compel corporations, inferior tribunals, or public officers to perform their functions, or some particular duty imposed upon them, which in its nature is imperative, and to the performance of which the party applying for writ has a clear legal right.'" *City of Seat Pleasant v. Jones*, 364 Md. 663, 672-73 (2001) (internal citation omitted). Furthermore, "'[t]he process is extraordinary, and if the right be doubtful, or the duty discretionary, or of a nature to require the exercise of judgment, or if there be any ordinary adequate legal remedy to which the party applying could have recourse, this writ will not be granted.'" *Id.* at 673 (internal citations omitted).

A writ of mandamus is a vehicle "to correct abuses of discretion and arbitrary, illegal, capricious, or unreasonable acts; but in exercising that power, care must be taken

not to interfere with the legislative prerogative, or with the exercise of sound administrative discretion, where discretion is clearly conferred." *Id.* (internal citations omitted). Furthermore, "[m]andamus is *an original action*, as distinguished from an appeal." *Id.* (emphasis added) (internal citations omitted). A writ of mandamus is further limited because "judicial review is properly sought through a writ of mandamus 'where there [is] no statutory provision for hearing or review and where public officials [are] alleged to have abused the discretionary powers reposed in them.' . . . Thus, prior to granting a writ of mandamus to review discretionary acts, *there must be both a lack of an available procedure for obtaining review* and an allegation that the action complained of is illegal, arbitrary, capricious or unreasonable." *Id.* at 674-75 (emphasis added) (internal citations omitted).

In this case, Ms. Morris seeks an amendment to the manner of death on her daughter's autopsy report. Here, the Legislature has provided an administrative remedy in § 5-310(d)(2) of the Health-General Article. The process requires a request by a person in interest—*within 60 days* after the medical examiner files the final findings and conclusions as to the cause and manner of death—to request a correction. *Id.* § 5-310(d)(2)(i). If denied, a person in interest can appeal the decision to the Secretary of Health, who would then refer the case to the Office of Administrative Hearings for a contested case hearing regarding the (1) denial and (2) the cause and manner of death. *Id.* § 5-310(d)(2)(ii). The administrative law judge hearing the case would then issue findings of fact to the Secretary of Health. *Id.* § 5-310(d)(2)(iii). The Secretary of Health reviews the findings of the administrative law judge, and issues a final order. *Id.* § 5-310(d)(2)(iv). A person in

interest could then appeal an adverse decision to the appropriate circuit court. *Id.* § 5-310(d)(2)(v).

This statutory process is the appropriate vehicle for relief, not a writ of mandamus. As discussed below, if Ms. Morris were able to receive a final decision and exhaust her administrative remedies, then she would be able to have that decision reviewed by the appropriate circuit court. Because this statutory process was available to Ms. Morris, a writ of mandamus was not the proper vehicle for which relief can be granted and, therefore, this case was correctly dismissed with prejudice.

B. Ms. Morris Failed to Exhaust Administrative Remedies Prior to Filing in the Circuit Court.

Ms. Morris has no claim because she failed to exhaust her administrative remedies, which is a precondition to pursuing this action in circuit court. "When a legislature provides an administrative remedy as the exclusive or primary means by which an aggrieved party may challenge a government action, the doctrine of administrative exhaustion requires the aggrieved party to exhaust the prescribed process of administrative remedies before seeking '*any other*' remedy or 'invok[ing] the ordinary jurisdiction of the court.'" *Priester v. Baltimore County*, 232 Md. App. 178, 193 (2017) (emphasis in original) (internal citation omitted). "The exhaustion doctrine fulfills the legislature's intent of delegating a matter to an agency for initial review and decision, promotes the policy of allowing agencies to exercise their expertise, and furthers judicial economy by limiting the number of appeals before the court, allowing the administrative process to

narrow the scope of those issues that do eventually warrant judicial review." *Id.* at 200 (internal citation omitted).

As noted above, an administrative remedy existed in the form of the statutory procedure set forth in § 5-310(d)(2) of the Health-General Article. Ms. Morris failed to exhaust this remedy, and therefore cannot maintain this suit. As a result, this case was correctly dismissed with prejudice.

C. There Was No Final Administrative Decision for Review in the Circuit Court.

Inherent in a party's obligation to exhaust his or her administrative remedies is the obligation to obtain a final administrative decision before seeking relief in the courts. *See Priester*, 232 Md. App. at 193 (stating that "[t]he rule of finality overlaps the rule of exhaustion [and that a] party must exhaust the administrative remedy **and** obtain a final administrative decision . . . before resorting to the courts" (emphasis in original) (internal citations and quotations omitted). To the extent that Ms. Morris may have attempted to engage in the statutorily prescribed method for amending the manner of death, there was no final decision by the appropriate administrative decision-maker. Because there was no final decision for the circuit court to review, this matter was correctly dismissed with prejudice.

D. Ms. Morris' Claim is Barred By the Applicable Statute of Limitations and/or Laches.

As noted above, the statute applicable to the relief that Ms. Morris seeks requires that a request to amend the manner of death must be made within 60 days of the medical examiner's determination. Md. Code Ann., Health-Gen. § 5-310(d)(2)(i) (LexisNexis

2015). The time period enumerated in this statute establishes the applicable statute of limitations,[2] and it has clearly been violated because Ms. Morris first sought amendment to the manner of death more than three years after her daughter's death. (E. 45.)

In the alternative, Maryland courts have also held that laches is a proper grounds for dismissal. *Ipes v. Board of Fire Commr's of Baltimore*, 224 Md. 180, 183-84 (1961); *see also O'Brien v. Board of License Commr's for Washington Coumty*, 199 Md. App. 563, 580 (2011). Laches is closely analogous to a violation of the statute of limitations because it is an "[u]nreasonable delay in pursuing a right or claim—almost always an equitable one—in a way that prejudices the party against whom relief is sought. Also termed *sleeping on rights*." *See* Laches, *Black's Law Dictionary* (10th ed. 2014) (emphasis in original). Even if the 60 days prescribed by statute were not the applicable statute of limitations, then the lengthy delay in seeking amendment to the manner of death should be considered barred by laches for equitable reasons.

Ms. Morris expressed, in great detail, the extent to which she has been consumed by the investigation surrounding her daughter's death. Waiting more than three years after her daughter's death to seek amendment to the manner of death is detrimental, not only to the process by which a medical examiner is expected conduct the business of performing autopsies, but also to the procedure established for making changes to the cause and manner

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[2] If the statutory period is not considered the applicable statute of limitations, then a standard civil action requires that it be "filed within three years from the date it accrues unless another provision of the Code provides a different period of time within which an action shall be commenced." Md. Code Ann., Cts. § Jud. Proc. § 5-101 (LexisNexis 2013). Even if this standard civil statute of limitations were applicable, Ms. Morris' claim would be time-barred.

of death. The extraordinary delay makes amendment to the manner of death difficult because, while Ms. Morris has been living with this case every day, the medical examiner has not. Memories fade, which is important because reexamining the evidence years later is difficult, if not impossible. To conduct an examination years later would require heavy reliance upon notes and records because the body itself is unavailable, absent the extreme measure of exhuming it for further analysis.

The delay is a violation of the statute of limitations and/or laches. The circuit court correctly dismissed this case with prejudice.

CONCLUSION

The judgment of the Circuit Court for Anne Arundel County should be affirmed.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3,688 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112. It has been printed with proportionally spaced type: Times New Roman – 13 point.

/s/ James N. Lewis
CPF#: 1212120174

CERTIFICATE OF SERVICE

I certify that on this 23rd day of September, 2019, a copy of the foregoing Brief of Appellee was sent by first-class mail, postage prepaid, to:

Ms. Marguerite R. Morris
701 Harvest Run Dr. #104
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/s/ James N. Lewis
CPF#: 1212120174

TEXT OF PERTINENT PROVISIONS

Annotated Code of Maryland, Health-General Article
(LexisNexis 2015)

§ 5-310. Autopsies.

. . .

(d) *Findings; correction of findings and conclusions.* – (1) The individual who performs the autopsy shall prepare detailed written findings during the progress of the autopsy. These findings and the conclusions drawn from them shall be filed in the office of the medical examiner for the county where the death occurred. The original copy of the findings and conclusions shall be filed in the office of the Chief Medical Examiner.

(2)(i) Except in a case of a findings of homicide, a person in interest as defined by § 4-101([g]) of the General Provisions Article may request the medical examiner to correct findings and conclusions on the cause and manner of death recorded on a certificate of death under § 4-502 of the General Provisions Article within 60 days after the medical examiner files those findings and conclusions.

(ii) If the Chief Medical Examiner denies the request of a person in interest to correct findings and conclusions on the cause of death, the person in interest may appeal the denial to the Secretary, who shall refer the matter to the Office of Administrative Hearings. A contested case hearing under this paragraph shall be a hearing both on the denial and on the establishment of the findings and conclusions on the cause of death.

(iii) The administrative law judge shall submit findings of fact to the Secretary.

(iv) After reviewing the findings of the administrative law judge, the Secretary, or the Secretary's designee, shall issue an order to:

1. Adopt the findings of the administrative law judge; or
2. Reject the findings of the administrative law judge, and affirm the findings of the medical examiner.

(v) The appellant may appeal a rejection under subparagraph (iv)2 of this paragraph to a circuit court of competent jurisdiction.

(vi) If the final decision of the Secretary, or of the Secretary's designee, or of a court of competent jurisdiction on appeal, establishes a different finding or conclusion on the cause or manner of death of a deceased than that recorded on the certificate of death, the medical examiner shall

amend the certificate to reflect the different finding or conclusion under §§ 4-212 and 4-214 of this article and § 4-502 of the General Provisions Article.

(vii) The final decision of the Secretary, or of the Secretary's designee, or of a court under this paragraph may not give rise to any presumption concerning the application of any provision of or the resolution of any claim concerning a policy of insurance relating to the deceased.

(viii) If the findings of the medical examiner are upheld by the Secretary, the appellant is responsible for the costs of the contested case hearing. Otherwise, the Department is responsible for the costs of the hearing.

. . .

Maryland Rules

15-701. Mandamus

(a) Applicability. This Rule applies to actions for writs of mandamus other than administrative mandamus pursuant to Title 7, Chapter 400 of these Rules or mandamus in aid of appellate jurisdiction.

(b) Commencement of Action. An action for a writ of mandamus shall be commenced by the filing of a complaint, the form and contents of which shall comply with Rules 2-303 through 2-305. The plaintiff shall have the rights to claim and prove damages, but a demand for general relief shall not be permitted.

(c) Defendant's Response. The defendant may respond to the complaint as provided in Rule 2-322 or Rule 2-323. An answer shall fully and specifically set forth all defenses upon which the defendant intends to rely.

(d) Amendment. Amendment of pleadings shall be in accordance with Rule 2-341.

(e) Writ of Mandamus.

(1) *Contents and Compliance.* The writ shall be peremptory in form and shall require the defendant to perform immediately the duty sought to be enforced, unless for good cause shown the court extends the time for compliance. The writ need not recite the reasons for its issuance.

(2) *Certificate of Compliance.* Immediately after compliance, the defendant shall file a certificate stating that all the acts commanded by the writ have been fully performed.