

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 232

September Term, 2014

ALLEN R. DYER

v.

MARYLAND STATE BOARD
OF EDUCATION

Krauser, C.J.
Meredith,
Arthur,

JJ.

Opinion by Krauser, C.J.

Filed: August 5, 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.

The Board of Education of Howard County (the “County Board”) requested that the Maryland State Board of Education (the “State Board”) remove Allen Dyer, appellant, from his elected position on the County Board for his purported misconduct in office. Dyer protested his removal and this matter was ultimately scheduled for a hearing before an administrative law judge. At the conclusion of that hearing, the ALJ recommended that the County Board’s request to remove Dyer from office be granted.

After the State Board adopted that recommendation, Dyer sought a declaratory judgment, in the Circuit Court for Howard County, that the State Board had neither the constitutional nor statutory authority to remove him from office for misconduct. When the State and County Boards moved to dismiss Dyer’s complaint, the Howard County circuit court granted that motion, holding that Dyer had failed to exhaust his administrative remedies and that, in any event, Dyer’s complaint for declaratory judgment was moot, because, not only had his term of office expired, but he had failed to win re-election and thus could no longer be removed from office.

From that decision Dyer noted this appeal, presenting the following question for our review:

Does the Maryland State Board of Education have the Constitutional and statutory authority to adjudicate and remove an elected member of a local board of education for misconduct in office, as redefined by the State Board itself?

Because we agree that Dyer’s failure to exhaust his administrative remedies, having never filed a petition for judicial review, in the circuit court, of the State Board’s decision,

precluded consideration of his action for a declaratory judgment, we shall affirm the circuit court’s decision without reaching the merits of Dyer’s contentions.

Background

In 2008, Dyer was elected to the County Board for a four-year term. Three years later, the County Board passed a resolution directing its counsel and chairman to request of the State Board that it exercise its statutory authority and remove Dyer from the County Board for numerous acts of “misconduct in office.”¹ On July 6, 2011, Dyer was notified by the State Board of the charges of misconduct in office and of his right to request a hearing on those charges. When he chose to exercise that right, the State Board transferred the matter to the Office of Administrative Hearings. There, Dyer filed a motion to dismiss the misconduct charges against him, claiming that the statute on which the County Board relied in seeking his removal was unconstitutional because it purportedly violated “the separation of powers doctrine.”

A hearing before an ALJ ensued, at the conclusion of which the ALJ issued a proposed order recommending that the State Board deny Dyer’s motion to dismiss. Dyer then filed exceptions to that recommendation, which were subsequently dismissed by the State Board as “premature.” Dyer responded to that decision by filing a second motion to dismiss, but, this time, on the grounds that he was entitled to immunity from both civil and criminal actions that are based upon words spoken in his “legislative capacity” as an elected

¹ Specifically, the resolution alleged that Dyer had “repeatedly breached confidentiality provisions, “acted unilaterally on board related matters in contravention of decisions made by the local board,” “undermined the functioning of the board,” “used litigation as a tactic against the board,” and “threatened other board members and staff.”

member of the County Board. After a hearing on that motion, the ALJ proposed that it be denied and the State Board adopted that proposal.

Dyer then turned to the Howard County circuit court for relief, asking that court to issue a writ of mandamus halting the State Board’s proceedings. When the circuit court declined to do so, Dyer noted an appeal in this Court. While that appeal was pending, Dyer’s term in office ended and he was not re-elected to the County Board. Consequently, this Court dismissed his appeal, concluding that the issue before it was now moot as Dyer could not be removed from a position that he no longer occupied. *Dyer v. State Bd. of Educ.*, No. 474, September Term, 2012.

But, while Dyer’s appeal seeking mandamus relief was pending before this Court, a hearing was held before an ALJ on the charges of misconduct in office. Although Dyer’s term of office on the County Board had ended two days earlier, the ALJ issued a proposed decision recommending that the State Board remove Dyer from an office he no longer held. The State Board adopted the ALJ’s proposed decision, stating that the ALJ had “correctly. . . concluded that Mr. Dyer’s conduct constituted misconduct in office.”²

Then, in the Circuit Court for Howard County, Dyer filed what he titled a “Petition for *De Novo* Review of Adjudication and Removal” but which he subsequently retitled, by amendment, a “Complaint for Declaratory Judgment Pursuant to a Non-Statutory

² Dyer was found to have repeatedly committed misconduct by “violat[ing] the confidentiality” of the County Board’s policies, “documents and discussions.” His making “offensive or intimidating comments to school system staff, Board staff, or Board members,” and his “filing complaints, appeals, or lawsuits against the County Board,” however, did not constitute misconduct in office.

Administrative Review of an Allegedly Illegal Adjudication.” In that complaint, he claimed that the State Board had exceeded its “constitutional and statutory authority” by “adjudicat[ing]” the charges of misconduct in office against him. At the hearing that followed before the circuit court, Dyer confirmed that he was not seeking judicial review of the State Board’s decision. He declared that, with respect to the State Board’s “adjudication” that he committed misconduct in office, he “never intended to bring that before this Court.” Instead, said Dyer, his “position [was] that this was never a standard petition for review of the administrative action, that from the beginning it was a question of jurisdiction” and that the “adjudication [was] beyond the constitutional or statutory authority of the State Board.” He was, therefore, seeking a declaratory judgment and not judicial review of the State Board’s decision.

The circuit court dismissed the complaint, stating that the issues Dyer raised were moot because, as Dyer had not been re-elected, he could no longer be removed from office, and that, in any event, because Dyer had failed to exercise his right to seek judicial review of the State Board’s decision, he had no right to seek a declaratory judgment with respect to the very issues that should have been raised in the petition for judicial review he never filed.

Discussion

Dyer contends that the State Board does not have the constitutional or statutory authority to “adjudicate whether an elected official is guilty” of misconduct in office. Although “misconduct in office” is a civil statutory ground for removal, *see* Md. Code (1978, 2014 Repl. Vol.) § 3-701(g)(iii) of the Education Article (“Educ.”), Dyer

characterizes “misconduct in office” as a “common law crime” and then asserts that the power to adjudicate that crime lies only with the judiciary. Thus, according to Dyer, it is only after a court convicts a member of a county board for the “crime” of misconduct in office that the State Board can remove that individual from office for that offense.

Moreover, while conceding that the State Board is part of the executive branch, Dyer nonetheless insists that his position on the County Board was “legislative and elected in nature,” and therefore it was “unconstitutional for the General Assembly to grant power to the Executive Branch of Maryland to remove officers of the legislative branch, especially given that the Board of Education for Howard County is rooted in local government.” Dyer further claims that he “was not accorded full due process rights” or given the “full protection” of the Rules of Evidence at the hearing before the OAH, where “the hearsay evidence rule is not recognized and notice is an afterthought.” Dyer therefore asks this Court to find that the State Board exceeded its constitutional and statutory authority by finding he had committed misconduct in office and removing him from his elected position on the County Board.

Before we reach these contentions, however, we must determine whether Dyer could seek declaratory relief below without first requesting judicial review of the State Board’s decision. The State and County Boards contend that he could not. And we agree.

According to the Maryland Uniform Declaratory Judgment Act, a declaratory judgment action is a “remedial” one, and “[i]ts purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” Md. Code (1973, 2013 Repl. Vol) § 3-402 of the Courts and Judicial Proceedings Article

(“CJP”). But, under the express terms of that act, “[i]f a statute provides a special form of remedy for a specific type of case, that statutory remedy *shall be followed in lieu of a proceeding under this subtitle.*” CJP § 3-409(b) (emphasis added). In other words, a declaratory judgment is not available where there is another remedy to be pursued. And if a declaratory judgment is not “an available or appropriate [] remedy,” an action seeking such relief must be dismissed. *Getty v. Carroll Cnty. Bd. of Elections*, 399 Md. 710, 745 (2007) (quoting *Christ v. Md. Dep’t of Nat. Res.*, 335 Md. 427, 435 (1994)).

In light of the foregoing legal precept, we note that the Education Article provides a special statutory remedy for a member of the Howard County Board of Education whose removal is being sought under that article on any one of four grounds:

- (i) Immorality;
- (ii) Misconduct in office;
- (iii) Incompetency; or
- (iv) Willful neglect of duty.

Educ. § 3-701(g)(1). That statutory remedy is “the right to a de novo review of the removal by the Circuit Court for Howard County.” Educ. § 3-701(g)(4).

This specific remedy was available to Dyer, as the County Board sought to remove him on the grounds of misconduct in office. And, under the declaratory judgment act, Dyer was required to pursue that statutory remedy “in lieu of a proceeding” for declaratory judgment. CJP § 3-409(b). Nonetheless, as the circuit court observed, Dyer “abandoned” and “waived his rights” to that review, choosing instead to ask the circuit court to “examine,” as that court expressed it, “the legal propriety of the actions of an administrative body, through a method completely unrecognized and unauthorized in Maryland law.” We

agree with that characterization of Dyer's request and therefore affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT COURT
FOR HOWARD COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**