

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0351

September Term, 2015

MONTGOMERY COUNTY, MARYLAND

v.

DANIEL SUGRUE

Krauser, C.J.,
Graeff,
Kehoe,

JJ.

Opinion by Graeff, J.

Filed: February 23, 2016

*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.

This appeal arises from a petition filed by Montgomery County, Maryland (the “County”), appellant, seeking judicial review of an order of the Worker’s Compensation Commission (the “Commission”). Daniel Sugrue, appellee, filed a motion to dismiss the County’s petition for judicial review or, in the alternative, for summary judgment, arguing that the March 9, 2015, petition filed in the Circuit Court for Montgomery County was untimely because it sought review of an order filed more than 30 days before the filing of the petition. The County filed an opposition to Mr. Sugrue’s motion, stating that the appeal was filed timely because the order appealed from was issued on February 10, 2015, and the November order date referenced in the petition was a mistake. The circuit court granted the motion to dismiss without a hearing.

On appeal, the County raises two questions for our review, which we have rephrased slightly, as follows:

1. Did the circuit court err in dismissing the petition for judicial review without holding a hearing?
2. Did the circuit err in dismissing the County’s petition for judicial review because the petition misstated the date of the order at issue?

For the reasons set forth below, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On December 18, 2001, Mr. Sugrue, a Montgomery County Police Officer, was injured when the police vehicle he was operating was struck by another vehicle that failed to yield the right-of-way. The Commission issued “Award Orders” resulting from Mr. Sugrue’s claims for compensation on May 13, 2004, July 1, 2009, and February 10, 2015.

On March 9, 2015, the County filed a Petition for Judicial Review, stating that it was petitioning the circuit court “pursuant to Maryland Rule 7-201 for the judicial review of the Order dated November 12, 2014, decision of the Maryland Workers’ Compensation Commission in the above-referenced matter.” On March 10, 2015, the circuit court issued a scheduling order. The deadline in the scheduling order for motions and discovery was, in July and August, 2015. A pretrial hearing was scheduled for August 13, 2015, and a trial date was to be set between September and December 2015.

On March 24, 2015, Mr. Sugrue filed his answer to the petition, as well as a motion to dismiss or, in the alternative, for summary judgment. In his motion to dismiss, Mr. Sugrue asserted that, pursuant to Md. Rule 7-203(a), a petition for judicial review must be filed within 30 days of the order that is the subject of appeal, and on its face, the County’s petition, filed on March 9, 2015, was not timely file because it sought review of an order issued in November 2014. In the motion for summary judgment, Mr. Sugrue attached a document outside the pleadings, i.e., the record of the Commission, which indicated that there was no November 12, 2014, order from which the County could take an appeal, and the only orders of the Commission were dated May 13, 2004, July 1, 2009, and February 10, 2015.

On March 25, 2015, the County filed an “Opposition to the Respondent’s Motion to Dismiss/Summary Judgment,” stating that it had timely filed an appeal of the Commission’s February 10, 2015, order. The County admitted that it had “mistakenly referenced the wrong date in its petition,” but it asserted that “the only order in this case was the one on February 10, 2015,” and because Mr. Sugrue had “actual, timely knowledge

of what is being appealed and suffered no prejudice, there is no legal basis to dismiss the County’s Petition for Judicial Review.” The County argued that the “typographical error” was “technical,” and because Mr. Sugrue “could not have mistaken that the February 10, 2015, order was the one being appealed from,” and he had pointed out in his own motion that the only order in this case is the February 10, 2015, order, he had timely notice and there was no basis for dismissal. Under the heading “Request for Hearing,” the County stated that it was “request[ing] a hearing on this matter.”

On March 26, 2015, the court granted Mr. Sugrue’s motion to dismiss. Given that disposition, it did not take any action on Mr. Sugrue’s motion for summary judgment.¹

STANDARD OF REVIEW

When ruling on a motion to dismiss, “consideration of the universe of “facts” pertinent to the court’s analysis of the motion are limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.” *D’Aoust v. Diamond*, 424 Md. 549, 572 (2012) (quoting *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004)). Recently, this Court reiterated the standard of review of a ruling on a motion to dismiss:

“A trial court may grant a motion to dismiss if, when assuming the truth of all well-pled facts and allegations in the complaint and any inferences that may be drawn, and viewing those facts in the light most favorable to the non-moving party, ‘the allegations do not state a cause of action for which relief may be granted.’” 181 *Latty v. St. Joseph’s Soc’y of the Sacred Heart*,

¹ On April 9, 2015, after the case was dismissed, the Commission sent the parties a notice regarding Claim No. B546415, advising that a petition for judicial review had been filed on March 9, 2015. It listed the date of the hearing as February 6, 2015. The notice indicated that any party wishing to oppose the petition for judicial review was required to file a response with the circuit court within 30 days of the date of the notice.

Inc., 198 Md. App. 254, 262-63 (2011) (quoting *RRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (2010)). The facts set forth in the complaint must be “pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.” *RRC*, 413 Md. at 644.

Advance Telecom Process LLC v. DSFederal, Inc., 224 Md. App. 164, 173 (2015) (parallel citations omitted). We review the circuit court’s decision to grant a motion to dismiss de novo. *Id.*

DISCUSSION

The County contends that the circuit court erred in dismissing its petition for judicial review for two reasons: (1) by granting the motion to dismiss without a hearing; and (2) “solely because [the petition] misstated the date of the Commission order under review.” With respect to the first argument, it asserts that, because the County requested a hearing in its opposition to the motion to dismiss, Maryland Rule 2-311(f) required the court to hold a hearing before dismissing the case. With respect to the second argument, the County contends that “case law is clear that where[, as here,] there are minor errors in the petition for judicial review and there has been substantial compliance with the rules, dismissal of a workers’ compensation appeal is not an appropriate remedy unless prejudice can be shown.” And the County asserts that Mr. Sugrue neither alleged, nor proved, that he was in any way prejudiced by the mistaken referral “to a nonexistent Commission order dated November 12, 2014, when the actual date was February 10, 2015.”

Mr. Sugrue contends that the circuit court properly granted his motion to dismiss the petition for judicial review. He does not argue that it was proper for the court to grant the motion without a hearing, but rather, he asserts that, assuming *arguendo* that the court

erred in failing to give the County a hearing, any error would be harmless, “given the County’s response to the [motion], in which it did not seek to amend its [p]etition” to reflect that the order of which it sought review was that of February 10, 2015. On the merits of the motion, he contends that the petition was properly dismissed as not timely filed, because it was filed on March 9, 2015, and sought review of an order issued in November 2014. He asserts that the Maryland cases cited by the County, in which “appellate courts have held that technical defects would not form the basis to dismiss an appeal where there is otherwise substantial compliance with the rules,” do not involve a “situation where a petitioner sought review of a nonexistent order.”

We begin by considering the claim that the court erred in disposing of the case without granting the County a hearing. Maryland Rule 2-311(f), provides:

A party desiring a hearing on a motion, other than a motion filed pursuant to [rules not applicable here], shall request the hearing in the motion or response under the heading “Request for Hearing.” The title of the motion or response shall state that a hearing is requested. . . [T]he court *may not* render a decision that is dispositive of a claim or defense without a hearing if one was requested as provided in this section.

(Emphasis added.).

Here, the County requested a hearing by including a request under the heading “Request for Hearing.” This Court repeatedly has said that a trial court errs or abuses its discretion in granting a disposition motion without granting a hearing if one is requested. *Uninsured Employers’ Fund v. W.M. Schlosser Co., Inc.*, 186 Md. App. 599, 607 (2009) (trial court erred when it granted motion for summary judgment in workers’ compensation appeal without granting a hearing where a hearing was requested), *rev’d on other grounds*,

414 Md. 195 (2010); *Bond v. Slavin*, 157 Md. App. 345, 355 (2004) (trial court erred when it granted dispositive motion without a hearing); *Wilson v. N.B.S., Inc.*, 130 Md. App. 430, 452-53 (2000) (trial court erred in dismissing case without holding a hearing); *Adams v. Offender Aid & Restoration of Baltimore, Inc.*, 114 Md. App. 512, 515 (1997) (Md. Rule 2-311(f) still requires a hearing when the moving party requests a hearing even if the non-movant does not reply to the motion); *Karl v. Blue Cross and Blue Shield of Maryland, Inc.*, 100 Md. App. 743, 747-48 (when dismissal of a case is requested as relief in a motion for sanctions, Md. Rule 2-311(f) mandates that the court hold a hearing upon request before granting the dismissal), *cert. denied*, 336 Md. 558 (1994). Pursuant to these cases, because the dismissal was dispositive of the case, it appears that the circuit court erred in failing to hold a hearing.

There is, however, a wrinkle in this case. As discussed during oral argument, Md. Rule 2-311(f) provides that, when a party requests a hearing, it “shall request the hearing in the motion or response under the heading ‘Request for Hearing,’” and “[t]he title of the motion or response shall state that a hearing is requested.” Here, the County requested a hearing, but it did not state in the title of its response that a hearing was requested.² It may be that, if the issue was properly raised, the failure to include the request in the title of the pleading would constitute an exception to the above-cited cases and excuse a trial court

² This requirement that the title of the response state that a hearing is requested was added in 2011. Order of the Standing Committee on Rules of Practice and Procedure (June 7, 2011) (Adding the second sentence of Md. Rule 2-311(f) to make it easier for judges to determine quickly whether a hearing was sought.). *See* One Hundred Sixty-Eighth Report of the Standing Committee on Rules of Practice and Procedure.

from conducting a hearing, even if the body of the complaint explicitly requested a hearing. In this case, however, appellant did not make this argument in his brief, and therefore, we will not address this issue. *See Sutton v. FedFirst Financial*, 226 Md. App. 46, 80 n.18 (2015) (when party fails to adequately brief an argument, court may decline to address it on appeal) (citing *Honeycutt v. Honeycutt*, 150 Md. App. 604, 618 (2003)). We conclude, based on the case law and the absence of any argument in the brief that this case is distinguishable, that the court abused its discretion in granting the motion to dismiss without a hearing.

In any event, the County has requested that, rather than remand to the circuit court for disposition, this Court address the merits of the motion to dismiss. We agree that is appropriate in this case, and we shall do so.

Maryland Rule 7-202 addresses the method of securing judicial review of agency decisions. Subsection (c), which addresses the contents of the petition, provides:

The petition shall request judicial review, *identify the order or action of which review is sought*, and state whether the petitioner was a party to the agency proceeding. If the petitioner was not a party, the petition shall state the basis of the petitioner's standing to seek judicial review. No other allegations are necessary. If judicial review of a decision of the [Commission] is sought, the petitioner shall attach to the petition a certificate that copies of the petition were served pursuant to subsection (d)(2) of this Rule.

(emphasis added.).

Pursuant to Maryland Rule 7-203, a petition for judicial review generally shall be filed within 30 days after the date of the order of which review is sought. In *Colao v. County Council of Prince George's County*, 346 Md. 342 (1997), the Court of Appeals

explained that the circuit court does not have discretion to consider untimely filed petitions for judicial review, and therefore, the petition must be filed within the thirty-day filing period for the circuit court to have authority to hear the appeal. *Id.* at 360. The Court made clear, however, that the principle that the thirty-day period under Rule 7-203 operates in the nature of a statute of limitations should not be confused with another principle, that mere technical defects regarding the petition will not require dismissal if the petition otherwise substantially complies with the procedural rules and there is no prejudice to the other party. *Id.* at 364-65.

In *Town of Somerset v. Montgomery County Board of Appeals*, 245 Md. 52 (1966), a timely petition for judicial review was filed, but the petition did not expressly allege that petitioners were persons aggrieved by the agency’s order, as required under the predecessor to Rule 7-202(c). The Court of Appeals recognized that, “[w]here there is compliance with the substance of the requirements of statutes or rules and the other parties have not been prejudiced, technical irregularities cannot be made the basis for depriving persons of the opportunity to assert their legal rights.” *Id.* at 61. The Court ultimately held that the petitioners’ failure to allege expressly in their petition that they were aggrieved parties was a technical irregularity that did not require dismissal of the parties. *Id.* at 61.

Here, the petition was filed within 30 days after the February 10, 2015, order. Although the date that the County gave for the order it was appealing was a mistake, the petition did include the Commission’s case number, and a review of the Commission record makes clear that the County’s petition was seeking judicial review of the February 10, 2015, order. The only order of the Commission filed anywhere near to the

County's filing of its petition was the February 10 order; prior to that time, a hearing had not been held since 2009. Moreover, the Commission's notice, sent to the parties following receipt of the certificate of notice of the filing of a petition for judicial review, showed that a reasonable review of the record permitted the conclusion that the County was seeking review of the order following the February 6, 2015, hearing. Accordingly, we conclude, under the circumstances of this particular case, that there was substantial compliance with the procedural rules.

The only remaining question, then, is whether Mr. Sugrue was prejudiced by the County's misidentification of the order from which it was seeking review. We conclude that he was not. Not only did Mr. Sugrue fail to allege that he was prejudiced, he implicitly acknowledged that he was aware of the County's misidentification when he noted in his motion that there was no Commission order dated November 12, 2014, and that the last order of the Commission was dated February 10, 2015. Moreover, Mr. Sugrue had been present at the February 6, 2015, hearing that led to the latest Commission order, and the order was followed within thirty days by a petition for judicial review. And finally, to the extent that he was not initially aware, Mr. Sugrue had plenty of advance notice of the County's position; he received the County's opposition to his motion, which was filed well in advance of the time provided in the Commission's notice, and well in advance of the deadlines set forth in the circuit court's scheduling order.

Accordingly, because the defect, under the circumstances of this case, was a technical one, the County substantially complied with the rules. And because there was no

showing that Mr. Sugrue was prejudiced, dismissal was not appropriate. The circuit court abused its discretion in granting Mr. Sugrue's motion to dismiss.³

**JUDGMENT REVERSED AND CASE
REMANDED TO THE CIRCUIT COURT
FOR MONTGOMERY COUNTY FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE PAID
BY APPELLANT.**

³ Because it was the County's mistake, however, that precipitated these legal proceedings, we shall exercise our discretion to impose costs on appellant.