Circuit Court for Montgomery County
Case No.: 486222V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 54

September Term, 2022

PETITION OF

KAREN MASON, ET AL.

Kehoe,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: December 5, 2022

The appellants, Horace and Karen Mason, filed a petition for judicial review of a decision by a Labor Relations Administrator that dismissed grievances that they had filed against their union, the Municipal and County Government Employees Organization Union Local 1994 (the "Union"). The circuit court dismissed their appeal because the Masons refused to re-caption their case to conform with the requirements of Maryland Rule 7-202(b). They have appealed that judgment. For the reasons that follow, we shall affirm the circuit court's judgment.

BACKGROUND

The Statutory Context

Montgomery County provides at least two remedial pathways by which the Masons' grievances against the Union could be adjudicated.

The first is the Montgomery County Administrative Procedure Act (the "MOCAPA"), codified as Chapter 2A of the Montgomery County Code (the "MCC"). The adjudicatory hearing provisions of the MOCAPA are similar to those contained in the Maryland Administrative Procedure Act, Md. Code, State Gov't Article § 10-201–06. However, the scope of the MOCAPA is limited. MCC § 2A-2.[1]

[1] In summary, MCC § 2A-2 provides that the MOCAPA applies only to proceedings before the following County tribunals: (1) the Human Relations Board, (2) the Commission on Landlord-Tenant Affairs, (3) the Merit System Protection Board, (4) the Board of Appeals (as to grants or denials of County permits or licenses, with some limitations), the Office of Consumer Protection, the Animal Matters Hearing Board, and the Office of Consumer Protection. Finally, MCC § 2A-2(h) authorizes the County

The second procedural pathway is an employee grievance resolution process for disputes that arise under collective bargaining agreements. This process is codified as Part VII of the Code of Montgomery County Regulations ("COMCOR") § 33.103.01.01. The adjudicatory process set out in Part VII is procedurally less formal than the MOCAPA. The last step in cases brought under MOCAPA and those brought under Part VII is the same: a petition for judicial review. *Compare* MCC § 2A.11; COMCOR § 33.103.01.01.10.

Although it has not filed a brief in this appeal, at the circuit court level, it was the Union's position that the procedurally appropriate means to resolve the Masons' grievances against it is the process set out in Part VII of COMCOR § 33.103.01.01. The Masons assert that they have a right to a hearing pursuant to the MOCAPA.

The Masons' Grievance

The Masons are former Montgomery County employees and former members of the Union. On November 10, 2018, and on January 14, 2019, the Masons filed prohibited

Executive "to add or delete additional quasi-judicial authorities from time to time by executive regulation[.]"

The Masons do not explain how their grievances against the Union fit into any of these categories. In a paper filed in the circuit court, they appeared to concede that the County Executive had not issued a regulation extending the MOCAPA to grievances arising under a collective bargaining agreement.

practice charges against the Union pursuant to COMCOR § 33.103.01.01.1(a).[2] Consistent with the regulation, the Masons' charges were forwarded to a County Labor Relations Administrator ("LRA No. 1") for adjudication. *See* COMCOR § 33.103.01.01.3. The Union filed motions to dismiss the charges and for sanctions. LRA No.1 deferred action on the Union's motions.

A hearing was scheduled for October 11, 2019. Two days before the hearing, LRA No. 1 recused himself and issued a written order setting out the background of the case and the reasons for his recusal. He explained that the purpose of the scheduled hearing was to allow for a narrowing of the issues presented in light of the apparent ambiguities in the Masons' charges against the Union. He stated that it had not been his intention to proceed with a formal hearing on October 11, but rather to have an informal proceeding to clarify the issues raised by the Masons' grievances. Because the Masons insisted on use of the more formal MOCAPA hearing, LRA No. 1 conducted a pre-hearing conference call to discuss the parameters of the October 11, 2019 hearing. In response, the Masons demanded that LRA No. 1 recuse himself because he was biased and a "protector of the [C]ounty and [U]nion by affiliation." The Masons then failed to

[2] COMCOR 33.103.01.01(a) states:

> 33.103.01.01 Prohibited Practices
>
> A written charge of a prohibited practice must be filed with the Labor Relations Administrator within 6 months of the incident giving rise to the charge, or within 6 months of the date on which the charging party knew or should have known of the matter that is the subject of the charge.

participate in the conference call. For these reasons, LRA No.1 recused himself and canceled the October 11, 2019 hearing.

In June 2020, a new LRA ("LRA No. 2") was appointed to the case and subsequently set a date for a status conference call. Before the conference call, Ms. Mason initiated an *ex parte* telephone call to LRA No. 2. A few days later, the Masons informed him that they would not participate in any status conference call as he was required to initiate formal proceedings under the MOCAPA. As a result of that conversation, LRA No. 2 withdrew from the case, believing that Karen Mason had possibly jeopardized his ability to be neutral. The status conference call was canceled.

In February 2021, a third LRA, David Clark, was appointed to the case. Mr. Clark sent an email to the Masons requesting a conference call "to get the pre-hearing process started." The Masons responded by email, stating that they would not participate in a conference call and insisting that Mr. Clark initiate a process pursuant to MOCAPA. In June 2021, Mr. Clark dismissed both of the Masons' charges with prejudice based on the Masons' refusal to participate in a pre-hearing conference. *See* MCC 2A-8(j) ("The hearing authority may impose sanctions against parties and witnesses for failure to abide by the provisions of this article, or for unexcused delays or obstructions to the pre-hearing and hearing process. Such sanctions may include . . . dismissals[.]"). The Masons then filed a motion for reconsideration, which Mr. Clark denied.

The Masons filed a petition for judicial review in the Circuit Court for Montgomery County. They captioned their petition:

FOR JUDICIAL REVIEW OF THE DECISION OF THE MCGEO LABOR RELATION ADMINISTRATOR
DAVID P. CLARK

* * *

IN THE CASE OF
Karen and Horace Mason Petitioners/ Claimant
And
Municipal County Government Employees Organization, (MCGEO)
Prohibited Practice Charges
Re: Exclusion from Union Meeting
And
Re: Receipt of MOU Titled: Adjustment of Correctional Officers Increment Date, dated 10/16/07
No case numbers to complaints as Labor Relation Administrator (LRA) refused

Shortly thereafter, the circuit court clerk's office sent the parties a notice of a new case number. The notice referred to the case as "KAREN MASON, ET AL VS MUNICIPAL COUNTY GOVERNMENT EMPLOYEES."

In July 2021, the Masons wrote to the clerk of the circuit court and advised her that she had "improperly docketed the defendant as being the Municipal County Government Employees Organization." The Masons asserted that Mr. Clark was a proper party to the judicial review action. From this premise, they contended that the court was required to serve him with process. They provided what they believed was his current address, namely the Montgomery County Executive's Office. They noted that although Mr. Clark had not been properly notified or served, he could now because they had recently updated his address to that of the office of the "Montgomery County Executive[.]" The Clerk subsequently entered a line that the petition has been mailed to Mr. Clark.

A few weeks later, the Masons filed a court paper with the Clerk. The court paper was captioned "PETITION OF KAREN AND HORACE MASON v. FOR JUDICIAL REVIEW OF THE DECISION OF DAVID P. CLARK[.]" The address given for LRA Clark was the Office of the Montgomery County Executive. The Masons stated:

> Please see the noted caption above . . . as being proper. The Municipal and County Government Employee Organization (MCGEO) is neither a defendant or other party to this judicial review and should have never been named as a separate defendant in an attempt to allow Municipal County Government Employees Organization (MCGEO) Local 1994 to stand as a defendant to this judicial review.
>
> The egregious misconduct displayed in altering our petition by adding a non-relevant defendant and other party is an attempt to deny petitioners the right to this judicial review of Mr. Clark's procedures. This action is arbitrary, capricious and an abuse of power. Petitioners moving forward expect all paperwork to reflect David P. Clark as the only defendant to this appeal thus removing MCGEO as [an] individual defendant and or other party to this judicial review.
>
> Petitioners have explained several times that David P. Clark was appointed as a MCGEO (County) Labor Relation Administrator appointed by the [C]ounty Exec Marc Elrich. Again, the only defendant to this judicial review is David P. Clark who is a MCGEO LRA.
>
> MCGEO Local 1994 is not a defendant to this petition and can only enter as an intervenor once notified by LRA David P. Clark.
>
> Please insure that the above and below caption is reflected on any and all moving forward paperwork[.]

In September 2021, Benjamin R. Legum, Esquire entered his appearance in the circuit court as the attorney for Mr. Clark. Additionally, he advised the clerk of the circuit court that his client was not a party to the Masons' petition and cited the proper

captioning provisions of Md. Rule 7-202(b).[3] The Masons subsequently filed a motion requesting a default judgment against Mr. Clark because he had failed to respond to their petition. The circuit court denied the motion and the Masons' subsequent motion for reconsideration. On February 25, 2022, the circuit court held a status hearing on the Masons' petition for judicial review. When the court found that the Masons had failed to name the Union as the proper respondent, the circuit court gave the Masons an opportunity to do so. They refused. The court then dismissed the petition with prejudice. The Masons have appealed.

ANALYSIS

The Masons raise thirteen issues in their informal appellate brief. Each of the substantive issues relate to the circuit court's dismissal of their petition because of their refusal to recaption their case.[4] We find no error by the circuit court and shall affirm.

[3] Subsequently, Mr. Clark transmitted the record to the Circuit Court for Montgomery County and filed a certificate of compliance under Md. Rule 7-202(e), stating that it had mailed the record to the Masons and the attorney for the Union.

[4] The Masons' issues can be summarized as follows: 1) the circuit court erred when it initially refused to name LRA Clark as the respondent; 2) the assignment office of the circuit court improperly designated the Union as the respondent; 3) Mr. Legum, LRA Clark's attorney, unlawfully asked the circuit court to remove LRA Clark from the case; 4) LRA Clark improperly submitted a document removing himself as the respondent and naming attorney Blaine Taylor as counsel for the Union respondent; 5) the circuit court erred in not granting the Masons' motion for default when LRA Clark failed to timely respond to their petition; 6) the circuit court erred in granting Mr. Legum's line seeking the removal of LRA Clark as the respondent; 7) the circuit court erred in notifying Mr. Legum of the hearing; 8) the circuit court erred in not disclosing the presence of the Union's attorney at the hearing; 9) the circuit court erred in generating

A

The procedures for judicial review of administrative agency decisions are found in Title 7, Chapter 2 of the Maryland Rules. Md. Rule 7-202(b) states:

> **(b) Caption.** The Petition shall be captioned as follows:
> IN THE CIRCUIT COURT FOR _____
> PETITION OF _____
> [name and address]
> FOR JUDICIAL REVIEW OF THE * CIVIL
> DECISION OF THE_____ *ACTION
> [name and address of administrative * No.___
> agency that made the decision]
> IN THE CASE OF _____
> [caption of agency proceeding,
> including agency case number]

Md. Rule 7-202(c) provides, among other things, that a petition shall: include a request for judicial review; identify the order/action of which review is sought; state whether the petitioner was a party to the agency proceeding, and if not, the basis for the petitioner's standing to seek judicial review.

Subsection (d), governing notice to the agency and from the agency to the parties, provides:

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an "unofficial" hearing sheet; 10) the record incorrectly reflects that the hearing was held at 2:30 p.m. instead of noon; 11) the circuit court erred because it has no authority to amend the case caption to remove LRA Clark; 12) the circuit court erred in its case summary by omitting documents and listing documents out of sequential order; and 13) the circuit court erred in its "notice" to the parties about the hearing**.**

> (1) **Notice to Agency. --** Upon filing the petition, the petitioner shall deliver to the clerk a copy of the petition for the agency whose decision is sought to be reviewed. The clerk shall promptly mail a copy of the petition to the agency, informing the agency of the date the petition was filed and the civil action number assigned to the action for judicial review.
>
> * * *
>
> (3) **Notice from Agency to Parties. –**
>
> (A) **Duty. --** Unless otherwise ordered by the court, the agency, upon receiving the copy of the petition from the clerk, shall give written notice promptly to all parties to the agency proceeding that:
>
> (i) a petition for judicial review has been filed, the date of the filing, the name of the court, and the civil action number; and
>
> (ii) a party who wishes to oppose the petition must file a response within 30 days after the date the agency's notice was sent unless the court shortens or extends the time.

Finally, subsection (e) requires the agency to file with the circuit court clerk a "certificate of compliance" with the rule's requirements.

The predecessor to Rule 7-202 was former Maryland Rule B2. The Court of Appeals adopted Rule B2 in response to *Adler v. City of Baltimore*, 242 Md. 329 (1966). In *Adler*, a property owner filed a non-conforming use application with the Board of Municipal and Zoning Appeals (the "Board") to use part of the building on his property as a real estate office. The Board denied the application. The owner appealed to the Baltimore City Circuit Court and designated the Board as a party defendant. Finding that the Board had been improperly made a party defendant, the circuit court dismissed the owner's appeal. The Court of Appeals affirmed on that ground. *Id.* at 333.

"The *Adler* case was decided on the premise that the Rules made an administrative appeal a traditional adversary proceeding. Following the *Adler* decision, the applicable Rules were amended to change the adversary concept to an identification concept." *Redden v. Montgomery County*, 265 Md. 567, 569 (1972).

In that case, Redden and several other residents of the Cabin John area of Montgomery County appeared before a County Board of Appeals (the "County Board") to protest the granting of a special use exception requested by two organizations to permit the construction and operation of a house for elderly or handicapped persons. The County Board granted the special exception. Redden filed a timely appeal in the circuit court in which the caption listed the County Board as the only appellee. Citing *Adler*, the applicants moved to dismiss, and the circuit court granted the motion. The Court of Appeals reversed. The Court explained what that is now Md. Rule 7-202 was amended to require the petitioner to file a copy of the notice appeal with the agency, which then provides written notice of the appeal "to every party to the proceeding before it." *Id*. at 569 (quotation marks omitted). The Court noted that the change was made to avoid the outcome of *Adler*, *i.e.*, a dismissal of an appeal that improperly names the agency as the appellee. *Id*. The Court observed:

> It is plain in our view that the timely notice of appeal fully met the identification requirement contemplated by the present rules as sufficient to set an administrative appeal in motion. The agency, the case before it, and its decision are all specifically identified, and the agency was clearly put on notice of its obligation to notify all parties in interest before it and it duly fulfilled its obligations. The listing of the Board as appellee neither added to nor subtracted from the effectiveness of the complete identifications of the notice of appeal. It was error to dismiss the appeal.

Id. at 570. *See also Montgomery County Police Dep't v. Jennings*, 49 Md. App. 246, 256 (1981) (holding that the caption was sufficient even though the caption did not include a designated party because the caption was the same as that before the administrative agency from whose order the appeal was taken).

The issue in *Redden* was misidentification of the parties. The case before us, however, presents a very different problem. The Masons insist on bringing their appeal against Mr. Clark personally. They have been repeatedly advised that their caption is incorrect, but refuse to change it. Their refusal is premised on their mistaken belief that Mr. Clark is a proper party to their judicial review action. He isn't. An LRA acts in a quasi-judicial capacity in deciding the charges brought before him by the Masons. In *Board of County Commissioners of Washington County, Maryland v. H. Manny Holtz, Inc.*, 60 Md. App. 133 (1984), we explained that an administrative hearing board "has no cognizable interest in the outcome of the proceeding; that is why it is not regarded as a proper party in the circuit court, even as a respondent/appellee[.]" *Id.* at 141 (emphasis added) (citing *Adler v. City of Baltimore*, 242 Md. 329 (1966), *Knox v. Mayor and City Council of Baltimore*, 180 Md. 88, 23 (1941), and *Miles v. McKinney*, 174 Md. 551 (1938)).

The circuit court would have erred had it ordered the case to be recaptioned as the Masons requested. Mr. Clark is not and never was a party to the administrative proceeding and is not a party to the judicial review proceeding. The Masons' insistence to the contrary reveals a conceptual problem that goes to the heart of the substance of their

contentions to the circuit court.[5] By arguing that Mr. Clark is a party to the proceedings and that the Union is not, the Masons sought to prevent the Union from properly framing the issues and arguments to assist the circuit court in making an informed decision. Even after the circuit court pointed out the difficulties with their position, the Masons declined to amend their petition. The circuit court did not error in dismissing the judicial review proceeding.

B

There is a separate and independent basis for our conclusion that the judgment of the circuit court should be affirmed. As we have explained, the scope of the MOCAPA is limited to the County agencies listed in MCC § 2A-2. None of those boards or commissions have the authority to resolve a grievance arising out of a collective bargaining agreement between a union and the County. [6] We express no opinion as to whether the Masons could have obtained relief under Part VII of COMCOR § 33.103.01.01.

[5] For example, and to the extent that they present substantive contentions in their brief, the Masons assert that the circuit court erred in denying their request for a default judgment because Mr. Clark had not filed an answer to their petition. Because Mr. Clark was not a party to the administrative proceeding, he had no standing to file anything in the judicial review proceeding other than the record notices given to the parties informing them of the petition for judicial review.

[6] As we have previously noted. MCC § 2A-2(h) authorizes the County Executive "to add or delete additional quasi-judicial authorities from time to time by executive regulation[.]" The Masons point to nothing that suggests that the County Executive has issued a regulation that would permit them to bring their case under MOCAPA.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.