

Circuit Court for Montgomery County
Case No. 441950-V

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 135

September Term, 2018

MORIFERE TOURE

v.

MARYLAND INSURANCE
COMMISSIONER

Wright,
Kehoe,
Friedman,

JJ.

Opinion by Kehoe, J.

Filed: November 6, 2019

*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 out of an order of the Circuit Court for Montgomery County dismissing a petition for judicial review filed by Morifere Toure, appellant, against the Commissioner of the Maryland Insurance Administration (“MIA”), appellee.

The sole issue presented for our consideration is whether the circuit court erred in dismissing the petition for judicial review without a hearing. For the reasons set forth below, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case has a long procedural history. In June 2014, appellant filed a complaint with the MIA alleging that his insurer, Safeco Insurance Company of America (“Safeco”), had engaged in unfair claim settlement practices in the handling of his homeowner’s insurance claim for damages caused to his home by a fire on June 22, 2013. The MIA determined that Safeco had not violated Maryland insurance law in handling appellant’s claim. Appellant filed a request for a contested case hearing to challenge that determination. After a November 3, 2016 hearing, an associate commissioner issued a memorandum and final order affirming the MIA’s determination.

Appellant filed a petition for judicial review in the Circuit Court for Montgomery County. The MIA sent a certified record to the circuit court, but it did not include 18 exhibits that were presented by the MIA at the hearing before the associate commissioner and specifically referenced in the memorandum affirming the MIA’s determination. In an order entered on August 15, 2017, the circuit court remanded the case to the MIA “to determine whether [appellant] had the opportunity to review the MIA exhibits, whether he

is due additional opportunity to be heard or present evidence, and any other proceedings not inconsistent with this Order[.]”

The MIA delegated to the Office of Administrative Hearings (“OAH”) the authority to conduct a hearing on the issues identified in the court’s order. The OAH sent a hearing notice to the parties that contained the following language: “AT ISSUE IS WHETHER THE LICENSEE VIOLATED MARYLAND INSURANCE LAW AND IF SO WHAT SANCTIONS ARE PROPER.” The notice did not contain any reference to the specific items outlined in the circuit court’s remand order. Safeco filed a motion to clarify the purpose of the hearing and requested that the hearing be limited to the issues identified by the circuit court. In its motion, Safeco advised that the MIA concurred with the relief requested. Appellant opposed Safeco’s motion and argued that the hearing should not be limited to the issues set forth in the remand order. He requested the OAH to conduct a *de novo* hearing or, alternatively, for the OAH to “decline his [sic] jurisdiction over the whole case.”

The OAH granted Safeco’s motion and ordered that “the issues at the hearing are: (1) whether the Complainant had the opportunity to review the MIA exhibits before the hearing held by the Associate Commissioner; (2) whether the Complainant is due an additional opportunity to be heard or present evidence on the merits of his complaint; and (3) whether there are any other necessary proceedings not inconsistent with the circuit court’s Order.” Appellant filed a motion for further clarification and a request for the case

to be decided on the underlying claim instead of the limited issues set forth in the remand order. That motion was denied.

On December 29, 2017, before any further action by the OAH, appellant filed a petition for judicial review in the Circuit Court for Montgomery County. (E. 66-77) Safeco and the MIA filed motions to dismiss. Appellant opposed the motion to dismiss filed by the MIA. No party requested a hearing. The circuit court dismissed the petition for judicial review on the ground that appellant “failed to exhaust his administrative remedies by filing his Petition for Judicial Review prematurely without a final order of the agency[.]” Appellant’s challenge to that order is the subject of the instant appeal.

DISCUSSION

Appellant contends that the circuit court erred in dismissing his petition for judicial review without a hearing.¹ In considering an appeal from the grant of a motion to dismiss, we conduct a *de novo* review to determine whether the circuit court’s conclusions were legally correct. *Gasper v. Ruffin Hotel Corp. of Md.*, 183 Md. App. 211, 226 (2008), *aff’d*, 418 Md. 594 (2011). As we stated in *Gasper*, “[i]n reviewing the underlying grant of a motion to dismiss, we must assume the truth of the well-pleaded factual allegations of the

¹ Appellant includes numerous arguments in his brief concerning, *inter alia*, an alleged absence of due process, violation of constitutional rights, fraud in the process, bias and impartiality of the final decision maker, irregularities, lack of notice of proposed actions, racial profiling, deficiencies in the hearing officer’s handling, documenting, and reporting on the case, and other issues pertaining to the handling of the administrative proceeding. In light of our determination that appellant failed to exhaust his administrative remedies before seeking judicial review, we shall not address those issues.

complaint, including the reasonable inferences that may be drawn from those allegations.”
Id. (quoting *Adamson v. Corr. Med. Servs.*, 359 Md. 238, 246 (2000)). Issues of statutory interpretation are legal issues that we review for legal correctness. *Falls Road Community Ass’n, Inc. v. Baltimore County*, 437 Md. 115, 134 (2014). “Dismissal is proper only if the complaint would fail to provide the plaintiff with a judicial remedy.” *Pulliam v. Motor Vehicle Admin.*, 181 Md. App. 144, 153 (2008).

To permit judicial review in the circuit court, the contested administrative agency decision must be a final order. *Willis v. Montgomery County*, 415 Md. 523, 534 (2010)(“As a general rule, an action for judicial review of an administrative order will lie only if the administrative order is final.”) (quoting *Holiday Spas v. Montgomery County Human Relations Comm’n*, 315 Md. 390, 395 (1989)); *Maryland Comm’n on Human Relations v. Baltimore Gas & Elec. Co.*, 296 Md. 46, 51-52 (1983)(“Generally, a party can resort to a court only when there is a final order in the administrative proceeding.”). The purpose of this requirement is to “avoid piecemeal actions in the circuit court seeking fragmented advisory opinions with respect to partial or intermediate agency decisions.”
Board of Public Works v. K. Hovnanian’s Four Seasons at Kent Island, LLC, 443 Md. 199, 222 (2015) (quoting *Driggs Corp. v. Md. Aviation Admin.*, 348 Md. 389, 407 (1998)).

Our well-established test for determining whether a judicial determination is a final order is to inquire whether that determination “concludes the rights of the parties, or if it denies the parties means of further prosecuting or defending their rights and interests in the subject matter in proceedings before the agency, thus leaving nothing further for the agency

to do.” *Maryland-Nat’l Capital Park & Planning Comm’n v. Anderson*, 395 Md. 172, 188 (2006)(quoting *Maryland Comm’n on Human Relations*, 296 Md. at 56)). In other words, for an administrative order to be “final,” it “must dispose of the case by deciding all question[s] of law and fact and leave nothing further for the administrative body to decide.” *Willis*, 415 Md. at 535 (and cases cited therein).

The circuit court was correct in dismissing appellant’s petition for judicial review because appellant failed to exhaust his administrative remedies. It is well established in Maryland that when “the Legislature has provided an administrative remedy for a particular matter or matters, there is a presumption that the Legislature intended such remedy to be primary and intended that the administrative remedy must be invoked and exhausted before resort to the courts.” *Furnitureland South, Inc. v. Comptroller*, 364 Md. 126, 133 (2001). In the case before us, the MIA delegated to the OAH the authority to conduct a hearing on the issues identified in the circuit court’s remand order. With regard to judicial review of an interlocutory order, § 10-222(b) of the State Government Article provides:

(b) *Review of interlocutory order.* – Where the presiding officer has final decision-making authority, a person in a contested case who is aggrieved by an interlocutory order is entitled to judicial review if:

- (1) the party would qualify under this section for judicial review of any related final decision;
- (2) the interlocutory order:
 - (i) determines rights and liabilities; and
 - (ii) has immediate legal consequences; and
- (3) postponement of judicial review would result in irreparable harm.

Appellant sought judicial review of an interlocutory order that merely clarified the purpose of the hearing before the OAH. The OAH had neither heard nor decided any issue. The interlocutory order did not determine any rights or liabilities and did not have any immediate legal consequences for appellant. Moreover, postponement of judicial review until after the OAH heard and decided the issue before it would not result in irreparable harm to appellant.

With respect to appellant’s contention that the circuit court dismissed his petition for judicial review without a hearing, we note that no party requested a hearing. Maryland Rule 2-311 requires a party to request a hearing in its motion or response under the heading “Request for Hearing.” Maryland law does not require a circuit court to hold a hearing on a motion to dismiss when no party requests one. *Adams v. Offender Aid & Restoration of Baltimore, Inc.*, 114 Md. App. 512, 515 (1997). As a result, the circuit court did not err in granting the motion to dismiss without holding a hearing.

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